6-13-88
Vol. 53 No. 113
Pages 21977-22124

Federal Register

Monday
June 13, 1988

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Kansas City, MO, and New York City and Sparkill, NY, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for 6 months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 16; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: Maxine Hill, 202-523-5229

Contents

Federal Register
Vol. 53, No. 113
Monday, June 13, 1988

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
2 21977
Proposed Rules:
1126 22003

9 CFR
78 21979

10 CFR
11 21979
25 21979
50 21981

12 CFR
210 21983
346 21986
620 21986

13 CFR
Proposed Rules:
125 22015

14 CFR
91 21986
99 21989
135 21986
Proposed Rules:
39 (2 documents) 22018, 22020

15 CFR
379 21989
399 21989

16 CFR
Proposed Rules:
13 (2 documents) 22022
305 (2 documents) 22022, 22106

18 CFR
375 21992
381 21992

21 CFR
510 21993
520 21993

25 CFR
11 21993
13 21993
20 21993
21 21993
23 21993
69 21995
125 21993
151 21993
175 21993
176 21993
177 21993
271 21993

28 CFR
0 21996
Proposed Rules:
11 22026

32 CFR
Proposed Rules:
701 22027

33 CFR
100 (4 documents) 21997, 21998
Proposed Rules:
126 22118
154 22118
155 22118
156 22118

34 CFR
Proposed Rules:
670 22072

42 CFR
Proposed Rules:
412 22028

47 CFR
Proposed Rules:
68 22035
73 (2 documents) 22035, 22036

50 CFR
658 21999
661 22000
663 22001
Proposed Rules:
642 22036

Rules and Regulations

Federal Register
Vol. 53, No. 113
Monday, June 13, 1988

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Amendment of Delegations of Authority

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This final rule amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department. It clarifies the authority of the Assistant Secretary for Economics to make long-range, worldwide, economic analyses of supply, demand, and trade in farm products and the financial and monetary aspects of agricultural affairs. This change will result in an improved process for developing long-range estimates and provide more consistent and reliable baseline data for agencies with responsibilities requiring the use of such projections. In addition, it removes the authority of the Assistant Secretary for Economics to conduct a feasibility study for the monitoring of foreign direct investment in U.S. real estate. Further, it authorizes the Assistant Secretary for Economics to coordinate energy programs under the Defense Production Act of 1950 and Federal Civil Defense Act of 1950. Last, it makes minor editorial changes.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Laura B. Snow, Chief, Management Analysis Branch, Administrative Services Division, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 447-7590.

SUPPLEMENTARY INFORMATION: This final rule clarifies the authority of the Assistant Secretary for Economics and the Administrator, Economic Research Service (ERS), to make long-range, worldwide, agricultural economic analyses. This authority has been interpreted as falling within the scope of the Assistant Secretary's existing delegation at 7 CFR 2.27(a)(3) and the ERS Administrator's delegation at 7 CFR 2.84(a)(2). However, due to administrative oversight, the long-range nature of these analyses has never been explicitly stated under the delegations of authority to the Assistant Secretary for Economics and ERS Administrator, although it has been referenced as belonging to the Assistant Secretary for Economics under the authorities of the Under Secretary for International Affairs and Commodity Programs at 7 CFR 2.21(d)(3). This final rule amends the redesignated delegation at 7 CFR 2.27(a)(2) and the delegation at 7 CFR 2.84(a)(2) to include long-range analyses.

In accord with the Assistant Secretary for Economics' authority for long-range economic research and analyses, this final rule delegates authority from the Secretary of Agriculture to the Assistant Secretary for Economics to establish interagency committees to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections. The Assistant Secretary for Economics has redelegated this authority to the Chairman, World Agricultural Outlook Board. This change will result in an improved process for developing long-range estimates and provide more consistent and reliable baseline data for agencies with responsibilities requiring the use of such projections.

In addition, this final rule removes the existing delegation to the Assistant Secretary for Economics at 7 CFR 2.27(a)(12) and the ERS Administrator at 7 CFR 2.84(a)(6) to conduct a study of the feasibility of establishing a system to monitor foreign direct investment in U.S. real estate. This study was completed in October 1979 and published under the title, "Monitoring Foreign Ownership of U.S. Real Estate: A Report to Congress." No further requirement exists under the authority of the International Investment Survey Act of 1976 (22 U.S.C. 3101 et seq.).

Further, this final rule amends the authority of the Assistant Secretary for Economics at 7 CFR 2.27(c) to include the coordination of energy programs among the functions and responsibilities assigned under the Defense Production Act of 1950 and the Federal Civil Defense Act of 1950. This change conforms to the responsibilities assigned by Departmental Regulation 1800-1, "Department Emergency Preparedness Responsibilities" (September 14, 1983). The Assistant Secretary for Economics has redelegated authority for coordination of energy programs to the Director, Office of Energy, in new 7 CFR 2.88(a)(5).

Last, this final rule makes minor editorial changes to correct typographical errors, improve readability, and remove a reference to the Program and Budget Review Board at 7 CFR 2.27(e). The latter Board no longer exists.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective in less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies)

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953. Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

§ 2.27 [Amended]

2. Section 2.27 is amended by removing paragraph (a)(12); by redesignating paragraphs (a)(2) and (a)(3) as (a)(1) and (a)(2), respectively; by redesignating paragraphs (a)(5) through (a)(11) as (a)(3) through (a)(9);

and by redesignating paragraphs (a)(13) through (a)(17) as (a)(10) through (a)(14).

3. Section 2.27 is further amended by removing the word "economics" in redesignated paragraph (a)(11) and inserting in its place the word "economic"; by removing the word "and" in its first appearance in the 11th line of paragraph (c) and by adding "; and the coordination of energy programs" before the period at the end of paragraph (c); by removing the word "Intra-agency" in paragraph (d)(2)(i) and inserting in its place the word "intra-agency"; by removing the word "Coordinating" in paragraph (d)(3) and inserting in its place the word "Coordination"; by removing the words "for consideration by the Program and Budget Review Board" in paragraph (e)(1); by removing the word "assumption" in paragraph (f)(4) and inserting in its place the word "assumptions"; by removing the word "compounds" in paragraph (g)(3)(iv) and inserting in its place the word "components"; and by revising the heading to paragraph (a), revising redesignated paragraph (a)(2), and adding a new paragraph (h) to read as follows:

§ 2.27 Delegations of authority to the Assistant Secretary for Economics.

(a) *Related to economic research and statistical reporting.* * * *

(2) Conduct economic and social science research and analyses relating to (i) food and agriculture situation and outlook; (ii) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers; (iii) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs; (iv) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and (v) rural people and communities, as authorized by Title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

* * * * *

(h) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

Subpart K—Delegations of Authority by the Assistant Secretary for Economics

4. Section 2.84 is amended by removing paragraph (a)(6) and redesignating paragraphs (a)(7) through (a)(11) as (a)(6) through (a)(10).

5. Section 2.84 is further amended by removing the date "1945" in paragraph (a)(1) and inserting in its place the date "1946"; by removing the word "a" in the fourth line of paragraph (a)(4) and inserting in its place the word "any"; by removing the word "economics" in redesignated paragraph (a)(6) introductory text and inserting in its place the word "economic"; by removing the citation "7 U.S.C. 3201" in redesignated paragraph (a)(6)(iii) and inserting in its place the citation "7 U.S.C. 3291"; and by revising paragraph (a)(2) to read as follows:

§ 2.84 Administrator, Economic Research Service.

(a) *Delegations.* * * *

(2) Conduct economic and social science research and analyses relating to (i) food and agriculture situation and outlook; (ii) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers; (iii) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs; (iv) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and (v) rural people and communities, as authorized by Title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

* * * * *

6. Section 2.86 is amended by removing the citation "§ 2.27 (a), (d), (e), and (f)" in the introductory text of paragraph (a) and inserting in its place the citation "§ 2.27 (a), (d), (e), (f), and (h)"; by removing the word "enonomy" in paragraph (a)(3)(iii) and inserting in its place the word "economy"; by removing the word "assumption" in paragraph (a)(3)(iv) and inserting in its place the word "assumptions"; by redesignating the subparagraphs (*a*), (*b*), and (*c*) in paragraph (a)(4)(ii) as (A), (B), and (C); by removing the word "Coordinating" in paragraph (a)(4)(iii) and inserting in its place the word "Coordination"; and by adding a new paragraph (a)(5) to read as follows:

§ 2.86 Chairman, World Agricultural Outlook Board.

(a) *Delegations.* * * *

(5) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

* * * * *

7. Section 2.88 is amended by removing the citation "§ 2.27(g)" in the introductory text of paragraph (a) and inserting in its place the citation "§ 2.27 (c) and (g)"; and by adding a new paragraph (a)(5) to read as follows:

§ 2.88 Director, Office of Energy.

(a) *Delegations.* * * *

(5) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), concerning coordination of energy programs.

§ 2.89 [Amended]

8. Section 2.89 is amended by removing the citation "§ 2.27(a)(11)" in the introductory text of paragraph (a) and inserting in its place the citation "§ 2.27(a)(9)".

For Subpart C:

Richard E. Lyng,

Secretary of Agriculture.

Dated: June 7, 1988.

For Subpart K:

Ewen M. Wilson,

Assistant Secretary for Economics.

Dated: May 17, 1988.

[FR Doc. 88-13163 Filed 6-10-88; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-067]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations governing the interstate movement of swine to include Oregon in the list of validated brucellosis-free states.

EFFECTIVE DATE: July 13, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5961.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations in 9 CFR Part 78 (referred to below as the regulations) prescribe conditions for the interstate movement of cattle, bison, and swine. States, areas, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for animals are based upon the disease status of the herd, area, or state from which the animal originates.

In an interim rule published in the Federal Register and effective February 16, 1988 (53 FR 4381-4382, Docket Number 87-158), we amended § 78.43 of the regulations, which lists validated brucellosis-free states, to include Oregon. Comments on the interim rule were required to be postmarked or received on or before April 18, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action allows breeding swine to move interstate from Oregon without being tested for brucellosis. The groups affected by this action are herd owners in Oregon. We expect the economic effect to be minimal; however, of the estimated 900 breeding swine herd owners in Oregon, very few, 30 or less, will ship swine interstate for breeding purposes.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 53 FR 4381-4382 on February 16, 1988.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 8th day of June 1988.

James W. Glosser,

Adminstrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-13224 Filed 6-10-88; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

Access Authorization Fee Schedule for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fee schedule charged for background investigations of licensee personnel who require access to National Security Information and/or Restricted Data and access to or control over Special Nuclear Material. The amendments comply with current regulations in Parts 11 and 25 which provide that NRC will publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting the investigations. The amendments also inform licensees that they have the option, for an additional cost, of having their applications processed in an expedited manner.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Chief, Facilities Security and Operational Support Branch, Division of Security, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-4124.

SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rate charged for these investigations. On April 1, 1988, OPM increased the rate that it charges the NRC for conducting access authorization background investigations. Since the fees that NRC charges its licensees for material access authorizations and personnel security clearances are dependent on the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect OPM's rate increase. OPM has increased the rate in charges for background investigations by $150,

or approximately 8 percent. NRC is passing this additional cost to the licensees. The amendments also inform licensees that they have the option, for an additional cost, of having their applications processed in an expedited manner. These changes comply with current regulations in Parts 11 and 25 which provide the NRC will publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by the OPM for conducting the investigations.

Because these are amendments dealing with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register.** Good cause exists to dispense with the usual 30-day delay in effective date because the amendments are of a minor and administrative nature dealing with a routine adjustment in access authorization fees.

Environmental Impact: Categorical Exclusion

The NRC had determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0046 and 3150–0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–4124.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Each NRC licensee or other organization which may require access to classified information or Special Nuclear Material in connection with a license or application for a license will be affected by this final rule. Less than 14 entities are currently required to meet the requirements of 10 CFR Parts 11 and 25. Because none of these has been determined to be small as defined by the Regulatory Flexibility Act of 1980, the Commission finds that this rule will not have significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. Section 11.15(e) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission, according to the following schedule:

i. NRC–U requiring full field investigation	$2,127
ii. NRC–U requiring full field investigation (expedited processing)	$2,645
iii. NRC–U based on certification of comparable full field background investigation	[1] 0
iv. NRC–U or R renewal	[1] 15
v. NRC–R	[1] 15
vi. NRC–R based on certification of comparable investigation	[2] 0

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,127 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a National Agency Check Investigation is necessary, a fee of $15.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC based on its review of available data, a fee of $2,127 will be assessed prior to the conduct of the investigation.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. (31 U.S.C. 9071).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. Appendix A is revised to read as follows:

Appendix A—Fees for NRC Access Authorization

Category	Fee
Initial "L" Access Authorization	[1] $15
Reinstatement of "L" Access Authorization	[1] $15
Extension or Transfer of "L" Access Authorization	[1] $15
Initial "Q" Access Authorization	$2,127
Initial "Q" Access Authorization (expedited processing)	$2,645
Reinstatement of "Q" Access Authorization	[2] $2,127
Reinstatement of "Q" Access Authorization (expedited processing)	[2] $2,645
Extension or Transfer of "Q"	[2] $2,127
Extension or Transfer of "Q" (expedited processing)	[2] $2,645

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,127 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

Dated at Rockville, Maryland, this 1st day of June, 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–13238 Filed 6–10–88; 8:45 am]

BILLING CODE 7590–01–M

10 CFR Part 50

Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) believes that the agency's mission to protect the public health and safety and the environment can best be served by a policy of cooperation with State governments which unites the common goals of the NRC and the States. Accordingly, it is the NRC's policy to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC. In accordance with this policy statement, the NRC will keep Governor-appointed State Liaison Officers routinely informed on matters of interest to the States, and NRC will respond in a timely manner to State requests for information and State recommendations concerning matters within NRC's regulatory jurisdiction. If requested, the NRC will routinely inform State Liaison Officers of public meetings between the NRC and its licensees and applicants, in order that State representatives may attend as observers, and NRC will allow State observation of NRC inspection activities. The NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities when these programs have provisions to ensure close cooperation with NRC. The NRC will not consider State proposals for instruments of cooperation to conduct independent inspection programs of NRC-regulated activities without close cooperation with, and oversight by, the NRC. This policy statement is intended to provide a uniform basis for NRC/State cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production or utilization facilities. Instruments of cooperation between the NRC and the States, approved prior to the effective date of this policy statement will continue to be honored by the NRC.

The Commission invites interested States, licensees, applicants, and members of the public to comment on the policy before it becomes final agency policy. The comment period will expire 30 days following the date of publication in the **Federal Register**. The proposed policy will be followed in the interim, except for those paragraphs in the policy statement and Implementation section dealing with State proposals for instruments of cooperation for participation in inspections and inspection entrance and exit meetings. The Commission will not act on these specific types of State-proposed instruments of cooperation until the comment period expires and the policy statement is published as a final policy statement.

DATES: The comment period expires on July 13, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. Federal workdays. Comments may also be delivered to the NRC Public Document Room, 1717 H Street NW., Washington, DC, between 7:45 a.m. and 4:15 p.m. Copies of comments received may be examined at the NRC Public Document Room.

FOR FURTHER INFORMATION CONTACT: Carlton C. Kammerer, Director for State, Local and Indian Tribe Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–0321, or Jane Mapes, Senior Attorney, Division for Rulemaking and Fuel Cycle, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–1642.

SUPPLEMENTARY INFORMATION:

I. Background

The Atomic Energy Act of 1954 (the Act) was amended in 1959 to add section 274, "Cooperation With States". Section 274 of the Act provides the statutory basis for NRC/State cooperation in nuclear matters and prescribes the framework for State regulation of certain nuclear materials and facilities. The focus of section 274 is primarily on protecting the public from radiological hazards of source, byproduct, and special nuclear materials below critical mass. Under section 274, the Federal Government, primarily NRC, is assigned exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of any nuclear production or utilization facility, except for certain authority over air emissions granted to States by the Clean Air Act.

The NRC has had extensive formal and informal interaction with the States throughout its history. The Agreement State Program, under section 274b of the Act, is an example of a formal program where the NRC relinquishes its regulatory authority over certain radioactive materials to the States. There are currently 29 Agreement States regulating approximately 65 percent of those licensees nationwide that use or manufacture those types of radioactive material. The Agreement State Program operates under two Commission Policy Statements, one for entering into section 274b agreements and one for periodically reviewing Agreement State radiation control programs for adequacy in protecting public health and safety and for compatibility with NRC programs. This policy statement supports continuation of the Agreement State Program and is not meant to affect it.

This policy statement is not intended to affect rights to notice and to participate in hearings granted to States by statute or NRC regulations.

Under 10 CFR Part 9, Subpart D, the NRC has provided procedures for handling requests for an NRC representative to participate or provide information in judicial or quasi-judicial proceedings conducted by States or other courts and agencies. This policy statement supports these procedures and does not affect them.

Under 10 CFR 50.55a, the NRC has recognized the role of the States within the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code (ASME Code) System. This policy statement does not affect the State and NRC relationship as laid out in the ASME Code.

The State Liaison Officer Program, established in 1976, provides a focal point in each of the 50 States and the Commonwealth of Puerto Rico for communication between NRC and the States. The Governor-appointed State Liaison Officer is intended to be the principal person in the State to keep the Governor informed of nuclear regulatory matters of interest to the Governor, to keep other State officials informed of these matters, and to respond to NRC inquiries.

Other areas in which NRC and States have worked together include environmental monitoring around the premises of nuclear power plant facilities and participation in the Conference of Radiation Control

Program Directors, Inc., which addresses radiological health in areas such as diagnostic and therapeutic X-rays, radioactive materials, and other related activities.

Under subsection 274i of the Act, the Commission is authorized, in carrying out its licensing and regulatory responsibilities, to enter into a Memorandum of Understanding (MOU) with any State to perform inspections or other functions on a cooperative basis as the NRC deems appropriate. According to the legislative history of section 274, subsection 274i clarifies the Commission's existing authority under subsection 161f which enables the NRC to obtain the services of State personnel to perform functions on its behalf as may be desirable.

NRC has entered into MOUs with several States under subsection 274i of the Act. MOUs have helped to facilitate environmental review during construction of nuclear power plants. At one point, there was a perceived need to broaden the basis for formal cooperative instruments with States under subsection 274i beyond that of water quality MOUs. As a result, general or "umbrella" MOUs were negotiated, with subagreements on specific issues such as low-level waste package and transport inspections. Two unique agreements were negotiated with Oregon; one concerning the sharing of proprietary information regarding the Trojan facility and the other covering coordination of the State and NRC resident inspector programs at Trojan. Additionally, the NRC has documented the protocol that States must follow to be permitted to observe certain NRC activities in "letter agreements."

In recent years, States have taken the initiative to monitor more closely commercial nuclear power plants and other nuclear production or utilization facilities within, and adjacent to, their State boundaries by becoming better informed and, in some cases, more involved in activities related to the regulation and operation of those facilities. It was this increased interest by States to become more actively involved in NRC activities that caused the NRC to re-examine those agreements previously negotiated with States and to determine a uniform policy for how future State proposals should be handled.

In developing this policy statement to be used to respond to future State proposals, the Commission, recognizing that the regulatory responsibilities assigned exclusively to the NRC by the Act cannot be delegated, has considered: (1) Those activities it deems appropriate for States to conduct on a cooperative basis and are desirable for State personnel to perform on behalf of the NRC; and (2) its oversight responsibility to ensure that NRC standards, regulations, and procedures are met where State representatives carry out NRC functions. Further, it is the Commission's intention to provide uniformity in its handling of State requests.

II. Statement of Policy

It is the NRC's policy to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC. The NRC and the States have complementary responsibilities in protecting public health and safety and the environment. Furthermore, the NRC is committed to the full and timely disclosure of matters affecting the public and to the fair and uniform handling of all agency interactions with the States, the public, and NRC licensees.

Accordingly, the NRC will continue to keep Governor-appointed State Liaison Officers routinely informed on matters of interest to the States. The NRC will respond in a timely manner to a State's requests for information and its recommendations concerning matters within the NRC's regulatory jurisdiction. If requested, the NRC will routinely inform State Liaison Officers of public meetings between NRC and its licensees and applicants in order that State representatives may attend as observers. Additionally, at the State's request, State representatives will be able to observe specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters.

The Commission recognizes that the involvement of qualified State representatives in NRC radiological health and safety programs has the potential for providing additional safety benefit. Therefore, the NRC will consider State proposals to enter into instruments of cooperation for State participation in inspections and inspection entrance and exit meetings. State participation in NRC programs would allow qualified State representatives, either individually or as a member of a team, to conduct specific inspection activities in accordance with NRC standards, regulations, and procedures in close cooperation with the NRC. State activities will normally be conducted under the oversight of an authorized NRC representative with the degree of oversight dependent upon the activity involved. In the proposal to enter into an instrument of cooperation, the State must identify those activities for which cooperation with the NRC is desired. The State must propose a program that: (1) Recognizes the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act; (2) is in accordance with Federal standards and regulations; (3) specifies minimum education, experience, training, and qualification requirements for State representatives which are patterned after those of NRC inspectors; (4) contains provisions for the findings of State representatives to be transmitted to NRC for disposition; (5) would not impose an undue burden on the NRC and its licensees and applicants; and (6) abides by NRC protocol not to be publicly disclose inspection findings prior to the release of the NRC inspection report.

Consistent with section 274(c) of the Act, the NRC will not consider State proposals for instruments of cooperation that do not include the elements listed above, which are designed to ensure close cooperation and consistency with the NRC inspection program. As a practical matter, the NRC is concerned that independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation. For purposes of this policy statement, an independent State inspection program is one in which State representatives would conduct inspections and assess NRC-regulated activities on a State's own initiative and authority without close cooperation with, and oversight by, an authorized NRC representative.

Instruments of cooperation between the NRC and the States, approved prior to the date of this policy statement will continue to be honored by the NRC. The NRC strongly encourages those States holding these agreements to consider modifying them, if necessary, to bring them into conformance with the provisions of this policy statement.

III. Implementation

As provided in the policy statement the NRC will routinely keep State Liaison Officers informed on matters of interest to the States. In general, all State requests should come from the

State Liaison Officer to the appropriate NRC Regional Office. The NRC will make every effort to respond as fully as possible to all requests from States for information on matters concerning nuclear production or utilization facility safety within 30 days. The NRC will work to achieve a timely response to State recommendations relating to the safe operation of nuclear production or utilization facilities. State representatives are free to attend as observers any public meeting between the NRC and its applicants and licensees. The appropriate Regional Office will routinely inform State Liaison Officers of the scheduling of public meetings upon request. State requests to observe inspections and/or inspection entrance and exit meetings conducted by the NRC require the approval of the appropriate Regional Administrator.

NRC will consider State participation in inspections and the inspection entrance and exit meetings, where the State-proposed agreement identifies the specific inspections they wish to assist NRC with and provides a program containing those elements as described in the policy statement. NRC may develop inspection plans along with qualified State representatives using applicable procedures in the NRC Inspection Manual. Qualified State representatives may be permitted to perform inspections in cooperation with, and on behalf of, the NRC under the oversight of an authorized NRC representative. The degree of oversight provided would depend on the activity. For instance, State representatives may be accompanied by an NRC representative initially, in order to assess the State inspectors' preparedness to conduct the inspection individually. Other activities may be conducted as a team with NRC taking the lead. All enforcement action will be undertaken by the NRC.

The Commission will decide policy matters related to agreements proposed under this policy statement. Once the Commission has decided the policy on a specific type of agreement, similar State-proposed agreements may be approved, consistent with Commission policy, by the Executive Director for Operations in coordination with the Office of Governmental and Public Affairs. A State-proposed instrument of cooperation will be documented in a formal MOU signed by NRC and the State.

Once the NRC has decided to enter into an MOU for State involvement in NRC inspections, a formal review, not less than six months after the effective date, will be performed by the NRC to evaluate implementation of the MOU and resolve any problems identified. Final agreements will be subject to periodic reviews and may be amended or modified upon written agreement by both parties and may be terminated upon 30 days written notice by either party.

Additionally, once State involvement in NRC activities at a nuclear production or utilization facility is approved by the NRC, the State is responsible for meeting all requirements of an NRC licensee and applicant related to personal safety and unescorted access for State representatives at the site.

Dated at Rockville, Maryland, this 8th day of June, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-13258 Filed 6-10-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Docket No. R-0620]

Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation J—Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks (12 CFR Part 210) to conform that regulation to the regulation the Board adopted on May 13, 1988, implementing the Expedited Funds Availability Act of 1987 (Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229)).

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph R. Alexander, Senior Attorney, Legal Division (202/452-2489); for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: In August 1987, Congress enacted the Expedited Funds Availability Act (Title VI of Pub. L. 100-86). The Act seeks to ensure the prompt availability of funds and the expedited return of checks. On May 13, 1988, the Board issued a new regulation (Regulation CC—Availability of Funds and Collection of Checks—12 CFR Part 229) to implement the Expedited Funds Availability Act (53 FR 19372 (May 27, 1988)). Subpart C of Regulation CC established new rules, applicable to depository institutions and certain other financial institutions, designed to speed the collection and return of checks. These rules cover the expeditious return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns by the paying bank, check indorsement standards, and other related changes to the check collection system.

Prior to the passage of the Expedited Funds Availability Act, the Board had established, under the authority of the Federal Reserve Act, a regulation to govern the collection of checks and other items by Federal Reserve Banks (Subpart A of Regulation J (12 CFR Part 210)). When the Board published its proposed Regulation CC for comment (52 FR 47112 (Dec. 11, 1987)), it also proposed a number of amendments to Regulation J to conform that regulation to the new check collection and return rules proposed in Subpart C of Regulation CC. Although approximately 1,000 comments were received on the combined proposal, no comments specifically addressed the proposed amendments to Regulation J.

The Board has adopted amendments to Subpart A of Regulation J. These changes generally conform Regulation J to the rules established in Subpart C of Regulation CC. The changes are therefore technical in nature; the substantive issues were considered during the rulemaking proceeding that resulted in the adoption of Regulation CC. The conforming amendments, *inter alia*:

1. Change the title of Regulation J from "Collection of Checks and Other Items and Wire Transfers of Funds" to "Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks" to distinguish Regulation J from Regulation CC ("Availability of Funds and Collection of Checks"), and make it clear that Regulation J covers only checks cleared or returned through a Federal Reserve Bank and wire transfers transmitted over the Federal Reserve Communications System, while Regulation CC covers all checks. A similar change is being made to the title of Subpart A.

2. Amend the authority citations to include the Expedited Funds Availability Act.

3. Conform the definitions of Regulation J to those adopted for Regulation CC where appropriate.

4. Provide for the handling by Reserve Banks of returned checks that the Reserve Banks did not handle during the forward collection process.

5. Conform the provisions regarding returned checks to the provisions of Regulation CC that eliminated the right of charge-back provided for in the Uniform Commercial Code and Regulation J prior to these amendments.

6. Remove the requirement that a paying bank give notice of nonpayment in the case of large-dollar returns. (This requirement is now in Regulation CC.)

In addition, the Board is eliminating footnote 2 to § 210.2(g) of Regulation J. Section 210.2(g) restricts the definition of "item" to instruments that can be collected at par. Footnote 2 states that "[t]he Board publishes a 'Memorandum on Exchange Charges,' listing the banks that would impose exchange charges on cash items and other checks forwarded by Reserve Banks and therefore would not pay at par." Since November 1980, no banks have imposed exchange charges on items forwarded by Reserve Banks, and the Board has discontinued publication of the "Memorandum." Consequently, footnote 2 no longer serves any purpose, and the Board is deleting it from Regulation J. Although the Board did not publish the removal of the footnote for comment along with the other proposed changes, the Board finds that publication is unnecessary under 5 U.S.C. 553(b).

The amendments the Board is adopting are technical in nature and are not expected to have any significant economic effect on small entities (see 5 U.S.C. 601 *et seq.*), nor do they impose any burdens on the public under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 210

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, effective September 1, 1988, Title 12, Chapter II, Part 210 of the Code of Federal Regulations is amended as set forth below:

1. The title of Part 210 is revised to read as follows:

PART 210—REGULATION J (COLLECTION OF CHECKS AND OTHER ITEMS AND WIRE TRANSFERS OF FUNDS BY FEDERAL RESERVE BANKS)

2. The authority citation for Part 210 is revised to read as follows:

Authority: Federal Reserve Act, sec. 13 (12 U.S.C. 342), sec. 11(i) (12 U.S.C. 248(i)), sec. 16 (12 U.S.C. 248(o) and 360), and sec. 19(f) (12 U.S.C. 464); and the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*)

3. The title of Subpart A is revised to read as follows:

Subpart A—Collection of Checks and Other Items By Federal Reserve Banks

4. Section 210.1 is revised to read as follows:

§ 210.1 Authority, purpose, and scope.

The Board of Governors of the Federal Reserve System ("Board") has issued this subpart pursuant to the Federal Reserve Act, section 13 (12 U.S.C. 342), section 11(i) (12 U.S.C. 248(i)), section 16 (12 U.S.C. 248(o) and 360), and section 19(f) (12 U.S.C. 464); the Expedited Funds Availability Act (12 U.S.C. 4001 et seq.); and other laws. This subpart governs the collection of checks and other cash and noncash items and the handling of returned checks by Federal Reserve Banks. Its purpose is to provide rules for collecting and returning items and settling balances.

5. In § 210.2, paragraph (e) and (f) and the undesignated paragraph at the end of paragraph (g) are revised, footnote 2 in paragraph (g) is deleted, paragraph (j) is revised, paragraphs (k) and (l) are redesignated as paragraphs (l) and (m), a new paragraph (k) is added, the introductory text of redesignated paragraph (l) is revised, and the undesignated paragraph at the end of § 210.2 is revised to read as follows:

§ 210.2 Definitions.

* * * * *

(e) "Cash items" means—

(1) A check other than one classified as a noncash item under this section; or

(2) Any other item payable on demand and collectible at par that the Reserve Bank of the District in which the item is payable is willing to accept as a cash item. "Cash item" does not include a returned check.

(f) "Check" means a draft, as defined in the Uniform Commercial Code, that is drawn on a bank and payable on demand. "Check as defined in 12 CFR 229.2(k)" means an item defined as a check in 12 CFR 229.2(k) for purposes of Subpart C of Part 229.

(g) * * *

Unless otherwise indicated, "item" includes both a cash and a noncash item, and includes a returned check sent by a paying or returning bank. "Item" does not include a check that cannot be collected at par, or an "item" as defined in § 210.26 that is handled under Subpart B.

* * * * *

(j) "Paying bank" means—

(1) The bank by which an item is payable unless the item is payable or collectible at or through another bank and is sent to the other bank for payment or collection;

(2) The bank at or through which an item is payable or collectible and to which it sent for payment or collection; or

(3) The bank whose routing number appears on a check in magnetic characters or fractional form and to which the check is sent for payment or collection.

(k) "Returned check" means a cash item or a check as defined in 12 CFR 229.2(k) returned by a paying bank, including a notice of nonpayment in lieu of a returned check, whether or not a Reserve Bank handled the check for collection.

(l) "Sender" means any of the following that sends an item to a Reserve Bank for forward collection:

* * *

* * * * *

Unless the context otherwise requires, the terms not defined herein have the meanings set forth in 12 CFR 229.2 applicable to Subpart C of Part 229, and the terms not defined herein or in 12 CFR 229.2 have the meanings set forth in the Uniform Commercial Code.

6. Paragraph (b) of § 210.3 is revised to read as follows:

§ 210.3 General provisions.

* * * * *

(b) *Binding effect.* This subpart, together with Subpart C of Part 229 and the operating circulars of the Reserve Banks, are binding on all parties interested in an item handled by any Reserve Bank.

* * * * *

7. Paragraph (a)(1) of § 210.6 is revised to read as follows:

§ 210.6 Status, warranties, and liability of reserve bank.

(a)(1) *Status and Liability.* A Reserve Bank shall act only as agent or subagent of the owner with respect to an item. This agency terminates not later than the time the Reserve Bank receives payment for the item in actually and finally collected funds and makes the proceeds available for use by the sender. A Reserve Bank may be liable to the owner, to the sender, to a prior collecting bank, or to the depositary bank's customer with respect to a check as defined in 12 CFR 229.2(k). A Reserve Bank shall not have or assume any

liability with respect to an item or its proceeds except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care, except as provided in paragraph (b) of this section and except as provided in Subpart C of Part 229.

* * * * *

8. Paragraph (b) of § 210.7 is revised to read as follows:

§ 210.7 Presenting items for payment.

* * * * *

(b) *Place of presentment.* A Reserve Bank or subsequent collecting bank may present an item—

(1) At a place requested by the paying bank;

(2) In the case of a check as defined in 12 CFR 229.2(k), in accordance with 12 CFR 229.36;

(3) At a place requested by the nonbank payor, if the item is payable by a nonbank payor other than through or at a paying bank;

(4) Under a special collection agreement consistent with this subpart; or

(5) Through a clearinghouse and subject to its rules and practices.

* * * * *

9. Section 210.9 is revised by redesignating footnote 3 as footnote 2, and revising the first sentence of paragraph (e) to read as follows:

§ 210.9 Payment.

* * * * *

(e) *Liability of Reserve Bank.* Except as set forth in 12 CFR 229.35(b), a Reserve Bank shall not be liable for the failure of a collecting bank, paying bank, or nonbank payor to pay for an item, or for any loss resulting from the Reserve Bank's acceptance of any form of payment other than cash authorized in paragraph (a), (b), and (c) of this section.

* * *

10. Section 210.10 is revised to read as follows:

§ 210.10 Time schedule and availability of credits for cash items and returned checks.

(a) Each Reserve Bank shall include in its operating circulars a time schedule for each of its offices indicating when the amount of any cash item or returned check received by it (or sent direct to another Reserve office for the account of that Reserve Bank) is counted as reserves for purposes of Part 204 of this chapter (Regulation D) and becomes available for use by the sender or paying or returning bank. The Reserve Bank shall give either immediate or deferred credit in accordance with its time schedule to a sender or paying or returning bank other than a foreign correspondent. A Reserve Bank ordinarily gives credit to a foreign correspondent only when the Reserve Bank receives payment of the item in actually and finally collected funds, but, in its discretion, a Reserve Bank may give immediate or deferred credit in accordance with its time schedule.

(b) Notwithstanding its time schedule, a Reserve Bank may refuse at any time to permit the use of credit given for any cash item or returned check, and may defer availability after credit is received by the Reserve Bank for a period of time that is reasonable under the circumstances.

11. Section 210.12 is revised to read as follows:

§ 210.12 Return of cash items and handling of returned checks.

(a) *Return of cash items.* A paying bank that receives a cash item directly or indirectly from a Reserve Bank, other than for immediate payment over the counter, and that pays for the item as provided in § 210.9(a) of this subpart, may, before it has finally paid the item, return the item in accordance with Subpart C of Part 229, the Uniform Commercial Code, and its Reserve Bank's operating circular. The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(b) *Return of checks not handled by Reserve Banks.* A paying bank that receives a check as defined in 12 CFR 229.2(k), other than directly or indirectly from a Reserve Bank, and that determines not to pay the check, may send the returned check to its Reserve Bank in accordance with Subpart C of Part 229, the Uniform Commercial Code, and its Reserve Bank's operating Circular. A returning bank may send a returned check to its Reserve Bank in accordance with Subpart C of Part 229, the Uniform Commercial Code, and its Reserve Bank's operating circular.

(c) *Paying bank's and returning bank's agreement.* By sending a returned check to a Reserve Bank, the paying bank or returning bank—

(1) Authorizes the receiving Reserve Bank (and any other Reserve Bank or returning bank to which the returned check is sent) to handle the returned check subject to this subpart and to the Reserve Banks' operating circulars;

(2) Makes the warranties set forth in 12 CFR 229.34; and

(3) Agrees to indemnify each Reserve Bank for any loss or expense (including attorneys' fees and expenses of litigation) resulting from—

(i) The paying or returning bank's lack of authority to give the authorization in paragraph (c)(1) of this section;

(ii) Any action taken by a Reserve Bank within the scope of its authority in handling the returned check; or

(iii) Any warranty made by the Reserve Bank under 12 CFR 229.34.

(d) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled a returned Check based on—

(1) The alleged failure of the paying or returning bank to have the authority to give the authorization in paragraph (c)(1) of this section;

(2) Any action by the Reserve Bank within the scope of its authority in handling the returned check; or

(3) Any warranty made by the Reserve Bank under 12 CFR 229.34,

the Reserve Bank may, upon the entry of a final judgment or decree, recover from the paying bank or returning bank the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay under the judgment or decree, together with interest thereon.

(e) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (d) of this section by charging any account on its books that is maintained or used by the paying or returning bank (or, if the returning bank is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if—

(1) The Reserve Bank made seasonable written demand on the paying or returning bank to assume defense of the action or proceeding; and

(2) The paying or returning bank has not made any other arrangement for payment that is acceptable to the Reserve Bank.

The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from the paying or returning bank in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in parapraph (c)(3) of this section.

(f) *Reserve Bank's responsibility.* A Reserve Bank shall handle a returned check, or a notice of nonpayment, in accordance with Subpart C of Part 229 and its operating circular. A Reserve

Bank may permit or require the paying or returning bank to send direct to another Reserve Bank a returned check with respect to which the depositary bank is located within the other Reserve Bank's District, in accordance with § 210.4(b).

(g) *Settlement.* A subsequent returning bank or depositary bank shall settle for returned checks in the same manner as for cash items presented for payment.

12. Paragraph (a) of § 210.13 is revised to read as follows:

§ 210.13 Unpaid items.

(a) *Right of charge-back.* If a Reserve Bank does not receive payment in actually and finally collected fund for an item, the Reserve Bank shall recover by charge-back or otherwise the amount of the item from the sender, paying bank, or returning bank from which it was received, whether or not the item itself can be sent back. In the event of recovery, neither the owner or holder of the item, nor the sender, paying bank, or returning bank from which it was received, shall have any interest in any reserve balance or other funds in the Reserve Bank's possesion of the bank failing to make payment in actually and finally collected funds.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 7, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-13181 Filed 6-10-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

Foreign Banks; Country Exposures Concentration

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: In a December 1987 amendment, (52 FR 49156, December 30, 1987) § 346.23 of the FDIC Rules and Regulations was amended to specify that country exposures by insured branches of foreign banks operating as such on November 19, 1984 must be within prescribed limits by June 14, 1988. The Board of Directors is extending the time for compliance with these limits until year end.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Charles V. Collier, Assistant Director, Division of Bank Supervision, (202) 898-6850, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On December 17, 1987, the FDIC extended the time for complying with § 346.23 of its regulations (concerning allowable exposures to foreign countries) to June 14, 1988. The FDIC is now further extending the time for compliance to December 31, 1988. The FDIC expects to have completed its review of Part 346 and to have issued final amendments to Part 346 by that date.

In accordance with 5 U.S.C. 553, the FDIC has found that prior notice and a delayed effective date with respect to this amendment are unnecessary, as the amendment delays the imposition of requirements that are already imposed by existing regulation. Since the amendment only provides for an extension of time for compliance with certain portions of the regulation and imposes no burden upon banks or the public, it is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 12 CFR Part 346

Bank deposit insurance, Foreign banks, Banking, Banks, Banking, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FDIC hereby amends Part 346 of title 12 of the *Code of Federal Regulations* as follows:

PART 346—FOREIGN BANKS

1. The authority citation for Part 346 continues to read as follows:

Authority: Secs. 5, 6, 13, P.L. 95-369, 92 Stat. 613, 614, 624 (12 U.S.C. 3103, 3104, 3108); Secs. 5, 7, 9, 10, P.L. 797, 64 Stat. 876, 877, 881, 882, (12 U.S.C. 1815, 1817, 1819, 1820).

2. Part 346 is amended by revising the third sentence of § 346.23 to read as follows:

§ 346.23 Country exposure concentrations.

* * * Insured branches operating as such on November 19, 1984 will be given until December 31, 1988 to reduce any existing excess exposure, including commitments. * * *

By Order of the Board of Directors.

Dated at Washington, DC, this 7th day of June 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-13242 Filed 6-10-88; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 620

Disclosure to Shareholders; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration published final amended regulations under Part 620 on May 11, 1988 (53 FR 16696). The final amendments to Part 620 relate to disclosure of loans involving a greater than normal risk of collectibility to senior officers and directors and their immediate families and affiliated organizations. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is June 13, 1988.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT:

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444

or

James Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4483, TDD (703) 883-4444

(12 U.S.C. 2252(a) (9) and (10)).

Dated: June 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-13216 Filed 6-13-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50-2]

Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: A final rule for flight restrictions in the vicinity of Grand Canyon National Park was published in the **Federal Register** on June 2, 1988 (53 FR 20264). This action publishes a chart to supplement the text of the final rule.

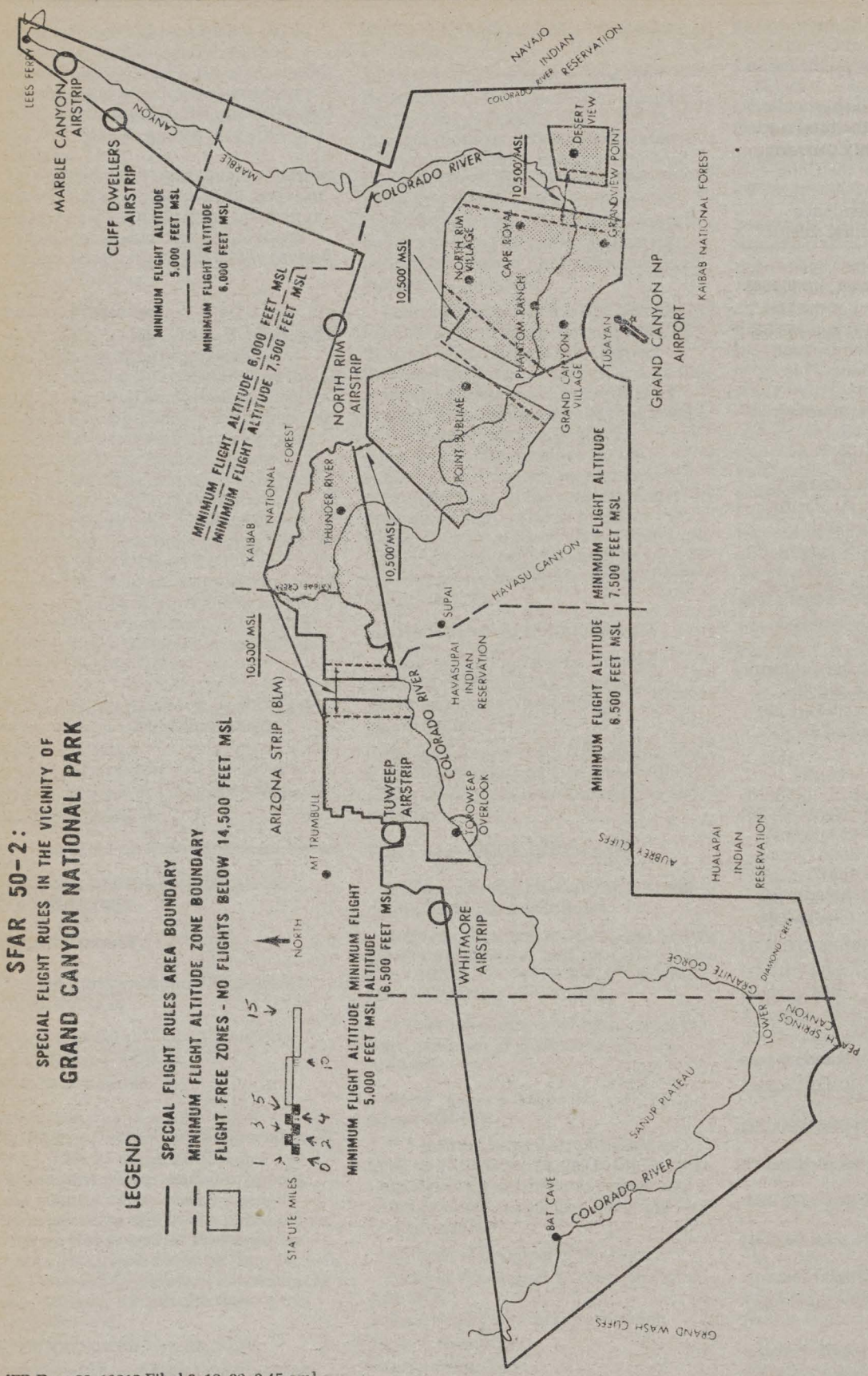
FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-3491.

Issued in Washington, DC., on June 6, 1988.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

BILLING CODE 4910-13-M



[FR Doc. 88-13019 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-13-C

14 CFR Part 99

[Docket No. 25113; Amdt. 99-13]

Security Control of Air Traffic; Modification of the U.S. Air Defense Identification Zones (ADIZ); Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to the final rule.

SUMMARY: In the May 20, 1988, issue of the **Federal Register**, the FAA published a final rule for modification of the U.S. Air Defense Identification Zones (53 FR 18216). The Final Rule contains some errors that require corrections. This document serves to correct typographical errors and terminology usage in the final rule.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

Adoption of the Corrections

Accordingly, pursuant to the authority delegated to me, Docket No. 25113; Amdt. No. 99-13, as published May 20, 1988, (53 FR 18216) is corrected as follows:

1. On page 18216, in the second column, third full paragraph, in the third line, remove "to" and add "the".

§ 99.1 [Corrected]

2. In § 99.1(b)(1) on page 18217, remove "latitude" and add "longitude".

3. In § 99.1(b)(3) on page 18217, in the second column, in the third line, remove "the Southern Border" and add "an".

4. In § 99.1(b)(5) on page 18217, remove "Hawaiian" and add "Hawaii".

§ 99.23 [Corrected]

5. On page 18218, in the second column, in § 99.23, in the eighth line, add the word "direct" after the word "average".

§ 99.42 [Corrected]

6. In § 99.42 on page 18218, remove all semicolons after the word "to".

§ 99.43 [Corrected]

7. In § 99.43 on page 18218, remove all semicolons after the word "to".

Issued in Washington, DC, on June 7, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-13180 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 80591-8091]

Commodity Control List; Recording and Reproducing Equipment

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule revises Export Control Commodity Number (ECCN) 1572A, which controls recording or reproducing equipment. This revision has resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. With the concurrence of the Department of Defense, the Department of Commerce has determined that this rule is necessary to protect U.S. national security interests.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature regarding equipment controlled for export under ECCN 1572A, call Joseph Westlake, Computer Systems Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377-2279.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) These collections have been appoved by the Office of Management and Budget under control number 0625-0001 and 0625-0140. This rule reduces the regulatory burden on exporters by removing the written assurance requirement regarding exports of technical data under 1572A.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Exective Order 12612.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 379 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 379 and 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

1. The authority citations for Parts 379 and 399 continue to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36891, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 379—[AMENDED]

§ 379.4 [Amended]

2. Section 379.4 is amended by removing paragraph (f)(3).

PART 399—[AMENDED]

Supplement No. 1 to § 399.1 [Amended]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1572A is amended by revising the heading and the "List of Types of Recording and/or Reproducing Equipment Controlled by ECCN 1572A" to read as follows:

1572A Recording or reproducing equipment, "recording media," and specially designed components and accessories therefor.

* * * * *

List of Types of Recording and/or Reproducing Equipment, "Recording Media" and Specially Designed Components and Accessories Therefor Controlled by ECCN 1572A

Note: For equipment that may be used in conjunction with electronic computers, see ECCN 1565.

(a) Recording or reproducing equipment using magnetic techniques, *except:*

(i) When specially designed for:

(1) Audio programs on tape or disk;

(2) Analog recording or reproducing of video programs on tape or disk; *or*

Note: This paragraph (a)(i)(2) does not apply to:

(a) Magnetic heads mounted on servo-mechanisms that include piezoelectric transducers and have a gap width less than 0.75 micrometer (29.5 microinches);

or

Note: Gap width is the dimension of the gap parallel to the relative movement between tape and head.

(b) Cylindrical structures used to record or reproduce video signals in a helical scan system recorder or reproducer;

(3) Digital reproducing (*i.e.*, play-back only) of video programs from tape or disk;

(ii) When specially designed to use magnetic card, tag, label or bank check "recording media" with a magnetic surface area not exceeding 65 cm^2 (13 sq. ins.);

(iii) Analog magnetic tape recorders having all of the following characteristics:

(A) Bandwidth at maximum speed not exceeding 300 kHz per track;

(B) "Recording density" not exceeding 2,000 magnetic flux sine waves per linear cm (5,080 magnetic flux sine waves per linear inch) per track;

(C) Not including recording or reproducing heads designed for use in equipment with characteristics superior to those defined in paragraph (A) or (B) above;

(D) Tape speed not exceeding 155 cm/s (61 inches per second);

(E) Number of recording tracks (excluding audio voice track) not exceeding 28;

(F) Start-stop time not less than 25 ms;

(G) Equipped with tape-derived (off-tape) servo speed control and with a time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of no less than ± 5 microsecond;

(H) Using only direct or FM recording;

(I) Not ruggedized for military use;

(J) Not rated for continuous operation in ambient temperatures from below 233 K to above 328 K (from below −40°C to above +55°C); *and*

(K) Not specially designed for underwater use;

Note: Analog instrumentation recording equipment permitting the recording of digital signals (*e.g.*, using a high density digital recording (HDDR) module) and having all the characteristics in paragraph (a)(iii) above are not controlled by this ECCN 1572.

(iv) Digital recording or reproducing equipment having all of the following characteristics:

(A) Cassette/cartridge tape drives or magnetic tape drives that do not exceed:

(*1*) A "maximum bit packing density" of 131 bits per mm (3,300 bits per inch) per track; *or*

(*2*) A "maximum bit transfer rate" of 2.66 million bits per second;

(B) Not ruggedized for military use;

(C) Not specially designed for underwater use; *and*

(D) Not rated for continuous operation in ambient temperatures from below 233 K to above 328 K (from below −40°C to above +55°C);

(b) Recording or reproducing equipment using laser beams that produce patterns or images directly on the recording surface or reproduce from such surfaces, *except:*

(i) When specially designed for the production of audio or video disk masters for the replication of entertainment- or education-type disks;

(ii) Facsimile equipment such as that used for commercial weather imagery and commercial wire photos and text;

(iii) Consumer-type reproducers for audio or video disks employing non-erasable media; *or*

(iv) When specially designed for gravure (printing plate) manufacturing;

(c) Graphics instruments capable of continuous direct recording of sine waves at frequencies exceeding 20 kHz;

(d) "Recording media" used in equipment controlled by (a) or (b) above, *except*:

(i) Magnetic tape having all of the following characteristics:

(A) Specially designed for television recording and reproduction or for instrumentation;

(B) Being a standard commercial product;

(C) Not designed for use in satellite applications;

(D) Been in use in quantity for at least two years;

(E) A tape width not exceeding 25.4 mm (1 inch);

(F) A magnetic coating thickness not less than:

(*1*) 2.0 micrometers (0.079 mil) if the tape length does not exceed 1,450 m (4,760 feet); *or*

(*2*) 5.0 micrometers (0.1975 mil) if the tape length does not exceed 6,000 m (19,710 feet);

(G) A magnetic coating material consisting of doped or undoped gamma-ferric oxide or chromium dioxide;

(H) A base material consisting only of polyester;

(I) A rated intrinsic coercivity not exceeding 64 kA/m (804 oersted); *and*

(J) A retentivity not exceeding 0.16 T (1,600 gauss);

(ii) Magnetic tape having all of the following characteristics:

(A) Specially designed for television recording and reproduction or for instrumentation;

(B) Being a standard commercial product;

(C) Not designed for use in satellite applications;

(D) Been in use in quantity for at least two years;

(E) A tape width not exceeding 50.8 mm (2 inches);

(F) A magnetic coating material consisting of doped or undoped gamma-ferric oxide or chromium dioxide;

(G) A rated intrinsic coercivity not exceeding 64 kA/m (804 oersted); *and*

(H) A tape length not exceeding 1,096 m (3,600 feet);

(iii) Video or audio magnetic tape in cassette having all of the following characteristics:

(A) Specially designed for television or audio recording and reproduction;

(B) Being a standard commercial product;

(C) A rated intrinsic coercivity not exceeding 120 kA/m (1,500 oersted);

(D) A retentivity not exceeding 0.30 T (3,000 gauss);

(E) A tape length not exceeding 550 m (1,805 feet); *and*

(F) A magnetic coating thickness not less than 2.0 micrometers (0.079 mil);

(iv) Computer magnetic tape having all of the following characteristics:

(A) Designed for digital recording and reproduction;

(B) A magnetic coating certified for a maximum "packing density" of 2,460 bits per cm (6,250 bits per inch) or 3,560 flux changes per cm (9,042 flux changes per inch) along the length of the tape;

(C) A magnetic coating thickness not less than 3.6 micrometers (0.142 mil);

(D) A tape width not exceeding 25.4 mm (1 inch);

(E) A tape length not exceeding 1,100 m (3,609 feet);

(F) Been in civil use for at least two years; *and*

(G) The base material consists only of polyester;

(v) Computer flexible disk cartridges having both of the following characteristics:

(A) Designed for digital recording and reproduction; *and*

(B) Not exceeding a "gross capacity" of 17 million bits;

(vi) Rigid magnetic disk "recording media" having all of the following characteristics:

(A) Being a standard commercial product;

(B) Non servo-written;

(C) A "packing density" not exceeding 866 bits per cm (2,200 bits per inch);

(D) Not exceeding 80 tracks per cm (200 tracks per inch); *and*

(E) Conforming to any of the following specifications:

(*1*) Unrecorded single disk cartridges (front loading (2315-type)) designed to meet ANSI X3.52–1976;

(*2*) Unrecorded single disk cartridges (top loading (5440-type)) designed to meet International Standard ISO 3562–1976;

(*3*) Unrecorded six-disk packs (2311 type) designed to meet ANSI X3.46–1974 or International Standard ISO 2864–1974(E); or

(*4*) Unrecorded eleven-disk packs (2316 type) designed to meet ANSI X3.58–1977 or International Standard ISO 3564–1976;

Advisory Note 1: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of reasonable quantities of equipment controlled by paragraph (a) above, as follows, or "recording media" in reasonable quantities for use with this equipment, controlled by paragraph (d) above:

(a) Analog magnetic tape recorders having all of the following characteristics:

(1) A bandwidth at maximum tape speed not exceeding 300 kHz;

(2) A "recording density" not exceeding 2,000 magnetic flux sine waves per linear cm (5,080 flux sine waves per linear inch) per track;

(3) Not ruggedized for military use;

(4) Not rated for continuous operation in ambient temperatures from below 233 K to above 328 K (−40°C to above +55°C);

(5) Not specially designed for underwater use;

(6) Not including recording or reproducing heads designed for use in equipment with characteristics superior to those defined in paragraph (1) or (2) above;

(7) Tape speed not exceeding 152.4 cm/s (60 inches per second);

(8) Number of recording tracks (excluding audio voice track) not exceeding 28 channels;

(9) Start-stop time not less than 25 ms; *and*

(10) Equipped with tape-derived (off-tape) servo speed control and with a time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of no less than ±1.0 microsecond;

(b) Systems having all of the following characteristics:

(1) Designed for use in civil aircraft or helicopters to record flight data for safety or maintenance purposes;

(2) Been in normal civil use for more than one year;

(3) No more than 100 input channels; *and*

(4) A sum of the individual channel recording bandwidth not exceeding 500 Hz;

(c) Incremental recorders or reproducers having all of the following characteristics:

(1) Designed for discontinuous sampling or collection of data in an incremental manner;

(2) The maximum tape speed, at the maximum stepping rate, does not exceed 50.8 mm (2 inches) per second;

(3) Not ruggedized for military use;

(4) Not rated for continuous operation in ambient temperatures from below 233 K to above 328 K (from below −40°C to above +55°C);

(5) Not specially designed for underwater use; *and*

(6) Not including recording or reproducing heads designed for use in equipment with characteristics superior to those defined in paragraph (a)(1) or (a)(2) above;

(d) Digital magnetic recorders having both of the following characteristics:

(1) Specially designed for seismic or geophysical applications; *and*

(2) Operating in the frequency range from 5 Hz to 800 Hz.

Advisory Note 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of computer tape in cassettes or cartridges having all of the following characteristics:

(a) Designed for digital recording and reproduction;

(b) A magnetic coating certified for a "packing density" of 3,940 bits per cm (10,008 bits per inch) along the length of the tape;

(c) A tape width not exceeding 2.54 cm (1 inch);

(d) A tape length not exceeding 1,100 m (3,608 feet); *and*

(e) In civil use for at least two years.

Advisory Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of magnetic tape controlled by paragraph (d) above having all of the following characteristics:

(a) Intended for being put into cassettes or cartridges under a commercial agreement;

Note: Magnetic tape controlled under this Advisory Note shall be used only for insertion into cassettes or cartridges specially designed for television or audio recording or reproduction.

(b) Being a standard commercial product;

(c) Not designed for use in satellite applications;

(d) Been in use in quantity for at least two years;

(e) A tape width not exceeding 25.4 mm (1 inch);

(f) A magnetic coating thickness not less than 2 micrometers (0.079 mil);

(g) A magnetic coating material consisting of doped or undoped gamma-ferric oxide;

(h) A base material consisting only of polyester;

(i) A rated intrinsic coercivity not exceeding 64 kA/m (804 oersted);

(j) A retentivity not exceeding 0.16 T (1,600 gauss); *and*

(k) A tape length not exceeding 6,500 m (21,320 feet).

Advisory Note 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "recording media" controlled by paragraph (d) above having all of the following characteristics:

(a) Specially designed magnetic tape for television recording or reproducing equipment;

(b) Being a standard commercial product;

(c) A tape width not exceeding 25.4 mm (1 inch);

(d) A magnetic coating material consisting of chromium dioxide;

(e) A base material consisting only of polyester; *and*

(f) A rated intrinsic coercivity not exceeding 60 kA/m (750 oersted).

Advisory Note 5: Licenses are likely to be approved for export to satisfactory end-users in County Groups QWY of reasonable quantities of magnetic tape controlled by paragraph (d) above, having all of the following characteristics:

(a) It is for use in civil television recording and reproducing applications;

(b) The magnetic coating material consists of undoped gamma-ferric oxide;

(c) The rated intrinsic coercivity does not exceed 28 kA/m 350 oersted);

(d) The tape width does not exceed 50.8 mm (2 inches); *and*

(e) A base material consists only of polyester.

Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of reasonable quantities of analog magnetic tape recorders controlled by paragraph (a) above, and specially designed components and "recording media" therefor controlled by paragraph (d) above, for use with those recorders, provided that:

(a) The equipment is for a legitimate civil end-use and is reasonable for that use;

(b) Details of such equipment have previously been submitted to the Office of Export Licensing and a determination has been made that the equipment is eligible for special treatment;

(c) The analog magnetic tape recorders are limited as follows:

(1) Characteristics are not superior to those defined in Advisory Note 1(a) (1) to (9);

(2) Equipped with tape derived (off-tape) servospeed control and with a time displacement (base) error of not less than ±0.8 microsecond at a tape speed of 152.4 cm (60 inches) per second and not less than ±1.6 microseconds at any lower tape speed measured in accordance with applicable IRIG and EIA documents.

Advisory Note 7 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of recording and reproducing equipment, as follows:

(a) Graphic instruments capable of continuous direct recording of sine waves at frequencies exceeding 20 KHz, and not containing a cathode ray tube with a fiber optic face plate;

(b) Analog magnetic tape recorders with all the following characteristics:

(1) Bandwidth of up to:

(i) 4 MHz per track and having up to 28 tracks; *or*

(ii) 2 MHz per track and having up to 42 tracks;

(2) Tape speed of 610 cm (24 inches) per second or less;

(3) Not designed for underwater use;

(4) Not ruggedized for military use; *and*

(5) Recording density not exceeding 6,532 magnetic flux sine waves per cm;

(c) Instrumentation digital recorders having all of the following characteristics:

(1) "Packing density" of 13,125 bits per cm or less;

(2) Maximum of 28 tracks;

(3) Tape speed of 305 cm (12 inches) per second or less;

(4) Not designed for underwater use; *and*

(5) Not ruggedized for military use;

(d) Magnetic tape appropriate for use with magnetic tape recorders free from control or exportable under this Advisory Note, or under any other Advisory Note for the People's Republic of China of any ECCN, provided that the tape length, "packing density" and "recording density" do not exceed the performance limits of the magnetic tape recorders;

(e) Disks appropriate for use with disk drives free from control or exportable under this Advisory Note, or under any other Advisory Note for the People's Republic of China of any ECCN, provided that the "packing density" and inner and outer diameters do not exceed the performance limits of the disk drives;

(f) Video magnetic tape recorders specially designed for television recording.

Note 8. The following are definitions of terms used in ECCN 1572:

"Recording media"—

All types and forms of specialized media used in recording techniques, including but not limited to tapes, drums, disks and matrices.

"Recording density" for direct recorders—

The recording bandwidth divided by the tape speed.

"Recording density" for FM recorders—

The sum of the carrier frequency and the deviation divided by the tape speed.

"Packing density" for digital recorders—

The number of bits per second per track divided by the tape speed.

Note: For the definition of the terms related to "digital computers" or "software," see ECCN 1565 or 1566.

Dated: June 8, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-13265 Filed 6-10-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM87-26-000]

Filing Fees Under the Independent Offices Appropriations Act of 1952; Correction

Issued June 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correction notice to the final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued Order No. 494, a final rule amending its filing fees under the Independent Offices Appropriations Act of 1952, on April 6, 1988. 53 FR 15,374 (Apr. 29, 1988). The revisions to §§ 375.308(m) and 375.314(gg) in the final rule are incorrect because those paragraphs were removed and their substance restated in §§ 375.308(e)(2) and 375.314(c)(8)(ii) by the final rule in Order No. 492, Regulations Delegating Authority, issued on April 5, 1988. 53 FR 16,058 (May 5, 1988). This notice directs that revisions in Order No. 494 concerning delegated authority to waive filing fees be made to the current provisions.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

Lois D. Cashell,

Acting Secretary.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

PART 375—[AMENDED]

1. The authority citation for 18 CFR Part 375 continues to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. 7178; Electric Consumers Protection Act of 1986, 16 U.S.C. 791a note; Department of Energy Organization Act, 42 U.S.C. 7101-7532, E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Federal Power Act, 16 U.S.C. 791-828c, as amended; Natural Gas Act, 15 U.S.C. 717-717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

2. In § 375.308, paragraph (e)(2) is revised to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

* * * * *

(e) * * *

(2) Fees prescribed in §§ 381.502, 381.505, 381.509, 381.510, 381.511, and 381.512 of this chapter in accordance with § 381.106 of this chapter;

* * * * *

3. In § 375.314, paragraph (c)(8)(ii) is revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(c) * * *

(8) * * *

(ii) The fees prescribed in § 381.302(a) of this chapter in accordance with § 381.302(c) of this chapter and the fees in § 381.601 of this chapter in accordance with § 381.106 of this chapter.

* * * * *

[FR Doc. 88-13078 Filed 6-10-88; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 381

[Docket No. RM87-26-000]

Filing Fees Under the Independent Offices Appropriations Act of 1952; Correction

Issued June 7, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued Order No. 494, a final rule amending its filing fees under the Independent Offices Appropriations Act of 1952, on April 6, 1988. 53 FR 15374 (Apr. 29, 1988). The regulatory text of § 381.208(b) of the Commission's regulations should have referred to the fee for a report under § 284.223(d) rather than to the fee for an application under

that provision. This notice corrects that reference.

EFFECTIVE DATE: June 7, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:

In § 381.208, paragraph (b) is corrected to read as follows:

§ 381.208 Requests under the blanket certificate notice and protest procedures.

* * * * *

(b) If a fee for a report under § 284.223(d) of this chapter has been paid for an existing transportation authorization pursuant to § 284.223(a) of this chapter, then no fee is assessed for the authorization under the blanket certificate notice and protest procedures.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13195 Filed 6–10–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Dichlorophene and Toluene Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Reid-Rowell, Inc. The NADA provides for use of a dichlorophene/toluene capsule as an anthelmintic in dogs and cats. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 102–673, sponsored by Reid-Rowell, Inc. (formerly Reid-Provident Laboratories, Inc.), 901 Sawyer Rd., Marietta, GA 30062. The NADA provides for use of Anaverm (dichlorophene/toluene) capsules for removal of ascarids and hookworms and as an aid in removing tapeworms from dogs and cats. As required by the withdrawal of approval, this document removes the sponsor's drug labeler code from 21 CFR 510.600(c)(2) and 21 CFR 520.580(b)(2).

In addition, because the firm is no longer sponsor of any approved NADA's, 21 CFR 510.600(c)(1) is amended by removing the firm from the list of sponsors of approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing "Reid-Provident Laboratories, Inc." and in paragraph (c)(2) by removing "000063."

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.580 [Amended]

4. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(2) by removing "000063."

Dated: June 6, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–13269 Filed 6–10–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 11, 13, 20, 21, 23, 125, 151, 175, 176, 177, and 271

Reporting and Recordkeeping Requirements

Jan. 22, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau is amending its program regulations by publishing the statements concerning information collection requirements required by the Office of Management and Budget. These technical amendments are being done to conform with 5 CFR Part 1320 by codifying such statements as part of its rules.

EFFECTIVE DATE: July 13, 1988.

FOR FURTHER INFORMATION CONTACT: Cathie L. Martin, Chief, Branch of Directives and Regulatory Management, Bureau of Indian Affairs, Room 334—Interior South, 18th and C Streets NW., Washington, DC 20240; telephone number (202) 343–3577.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (April 1, 1981) gave the Office of Management and Budget approval authority over agency collections of information from the public. The Office of Management and Budget requires that an agency that has collections of information contained in its regulations publish approved OMB control numbers for such collections in the **Federal Register** to ensure that this information is available to the public and that it is included in the Code of Federal Regulations.

This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. The Department has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department of the Interior has also determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This technical amendment includes only OMB control numbers for

information collection requirements in 25 CFR Parts 11, 13, 20, 21, 23, 125, 151, 175, 176, 177, and 271. These rules are procedural in nature and therefore are not subject to notice and comment requirements as provided by 5 U.S.C. 553(b).

List of Subjects

25 CFR Part 11

Courts, Indians-law, Law enforcement, Penalties, Reporting and recordkeeping.

25 CFR Part 13

Courts, Indians-law, Infants and children.

25 CFR Part 20

Administrative practice and procedure, Child welfare, Indians, Public assistance programs.

25 CFR Part 21

Government contracts, Indians, Intergovernmental relations.

25 CFR Part 23

Administrative practice and procedure, Child welfare, Grant programs—Indians, Grant programs—social programs, Indians, Reporting and recordkeeping requirements.

25 CFR Part 125

Indians—claims, Reporting and recordkeeping requirements.

25 CFR Part 151

Indians—lands.

25 CFR Parts 175, 176 and 177

Electric power, Indians—lands, Irrigation.

25 CFR Part 271

Administrative practice and procedure, Government contracts, Indians, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Parts 11, 13, 20, 21, 23, 125, 151, 175, 176, 177 and 271 of Title 25, Chapter I of the Code of Federal Regulations are amended as set forth below.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: R.S. 463; 25 U.S.C. 2. Interpret or apply sec. 1, 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

2. The title of § 11.1 is revised and a new paragraph (f) is added to read as follows:

§ 11.1 Application of regulations and information collection.

* * * * *

(f) *Information collection.* The information collection requirements contained in §§ 11.27 and 11.28 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0094. The information is collected by Courts of Indian Offenses having jurisdiction over tribal members in civil and criminal matters when such members seek to be married or divorced. The information is used by the Courts of Indian Offenses to issue marriage licenses and divorce decrees. Response is required to obtain a benefit.

PART 13—[AMENDED]

3. The authority citation for 25 CFR Part 13 continues to read as follows:

Authority: 25 U.S.C. 1952.

4. A new § 13.2 is added to read as follows:

§ 13.2 Information collection.

The information collection requirement contained in § 13.11 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0112. The information is being collected when federally recognized tribes request reassumption of jurisdiction over child custody proceedings. The information will be used to determine if reassumption of jurisdiction over Indian child custody proceedings is feasible. Response is required to obtain a benefit.

PART 20—[AMENDED]

5. The authority citation for 25 CFR Part 20 continues to read as follows:

Authority: 25 U.S.C. 13; sec. 20.21 also issued under Pub. L. 98–473.

6. A new § 20.4 is added to read as follows:

§ 20.4 Information collection.

The information collection requirements contained in §§ 20.10, 20.11, 20.22, 20.23, and 20.24 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0017. The information is collected to determine applicant eligibility for services. The information will be used to determine eligibility and to insure uniformity of services. Response is required to obtain a benefit.

PART 21—[AMENDED]

7. The authority citation for 25 CFR Part 21 continues to read as follows:

Authority: Sec. 3, 46 Stat. 596, as amended; 25 U.S.C. 454.

8. A new § 21.9 is added to read as follows:

§ 21.9 Information collection.

The information collection requirements contained in §§ 21.3 and 21.6 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1076–0113 and 1076–0110, respectively. The information in § 21.3 is being collected to determine how contract funds are utilized. The information will be used to measure performance of the contractor and plan for future contracts. The information in § 21.6 is collected to specify the services or assistance to be rendered and the plan for expenditure of funds to be turned over to the state or agency. The information will be used to determine the adequacy of services and utilization of the budget provided by the contracting agency. Response is required to obtain a benefit.

PART 23—[AMENDED]

9. The authority citation for 25 CFR Part 23 continues to read as follows:

Authority: 5 U.S.C. 301; secs. 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

10. Section 23.4 is amended by redesignating the existing text as paragraph (b) and adding a new paragraph (a) to read as follows:

§ 23.4 Information collection.

(a) The information collection requirement contained in § 23.13 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0111. The information is collected in a notice from the court in order to certify payment of appointed counsel in the child custody proceedings. The information will be used to determine if an individual Indian involved in the Indian child custody proceeding is eligible for payment of appointed counsel's attorneys fees and to determine if any state statutes provide for coverage of attorney fees under these circumstances. Response is required to obtain a benefit.

* * * * *

PART 125—[AMENDED]

11. The authority citation for 25 CFR Part 125 continues to read as follows:

Authority: Act of March 2, 1889, c. 405, sec. 17, 25 Stat. 888, 895; Act of June 10, 1896, c. 398, 29 Stat. 321, 334; Act of May 21, 1928, c.

662, 45 Stat. 984; Act of June 18, 1934, c. 576, sec. 14, 48 Stat. 987, 25 U.S.C. 474.

12. A new § 125.7 is added to read as follows:

§ 125.7 Information collection.

The information collection requirements contained in §§ 125.4 and 125.5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0004. The information is being collected to solicit information necessary to make a determination of eligibility for Sioux benefits. The information will be used to determine eligibility for payment. Response is required to obtain a benefit.

PART 151—[AMENDED]

13. The authority citation for 25 CFR Part 151 continues to read as follows:

Authority: R.S. 161; 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended; 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended; 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, and 1495, and other authorizing acts.

14. A new § 151.14 is added to read as follows:

§ 151.14 Information collection.

The information collection requirements contained in §§ 151.9 and 151.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. The collection of information is from Indian tribes or individuals who desire to acquire land in trust and who must identify the party(ies) involved and a description of the land involved. The information will be used by the Bureau to acquire the land in trust on behalf of the Indian tribes and individuals. Response is required to obtain a benefit.

PART 175—[AMENDED]

15. The authority citation for 25 CFR Part 175 continues to read as follows:

Authority: Sec. 2, 49 Stat. 1039; 54 Stat. 422; and 5 U.S.C. 301, unless otherwise noted.

16. A new § 175.56 is added to read as follows:

§ 175.56 Information collection.

The information collection requirements in §§ 175.4, 175.25, and 175.32 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0021. The information is being collected to obtain information on needed electrical services. The information will be used to determine eligibility for service and gather needed information for billing. Response is required to obtain a benefit.

PART 176—[AMENDED]

17. The authority citation for 25 CFR Part 176 continues to read as follows:

Authority: Sec. 7, 62 Stat. 273; 5 U.S.C. 301.

18. A new § 176.22 is added to read as follows:

§ 176.22 Information collection.

The information collection requirements contained in §§ 176.4, 176.16, and 176.54 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0021. The information is being collected to obtain information on needed electrical services. The information will be used to determine eligibility for service and gather needed information for billing. Response is required to obtain a benefit.

PART 177—[AMENDED]

19. The authority citation for 25 CFR Part 177 continues to read as follows:

Authority: Sec. 5, 43 Stat. 476, 45 Stat. 210, 211; 5 U.S.C. 301.

20. A new § 175.55 is added to read as follows:

§ 177.55 Information collection.

The information collection requirements in §§ 177.4, 177.8, 177.12, and 177.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0021. The information is being collected to obtain information on needed electrical services. The information will be used to determine eligibility for service and gather needed information for billing. Response is required to obtain a benefit.

PART 271—[AMENDED]

21. The authority citation for 25 CFR Part 271 continues to read as follows:

Authority: Sec. 102, Pub. L. 93–638, 88 Stat. 2203, 2206 (25 U.S.C. 450f).

22. A new § 271.5 is added to read as follows:

§ 271.5 Information collection.

The Office of Management and Budget has approved, under 44 U.S.C. 3501 *et seq.*, the information collection requirements in §§ 271.14, 271.17, 271.18, and 271.21 under assigned control number 1076–0088; § 271.33 under control number 1076–0090; and §§ 271.41, 271.42, 271.44, 271.46, 271.47, and 271.49 under control number 1076–0091. The information for #1076–0088 is being collected to determine the eligibility of applicants, to protect the service population, and safeguard Federal funds and other resources. The information is used to determine eligibility and to permit the Bureau to administer, monitor and evaluate contract programs. The information for #1076–0090 is being collected to ensure that the trust responsibilities are not abrogated and to protect, preserve and perpetuate the resources of an Indian tribe or individual. The information will be used to determine eligibility of trust related activities or functions under proposed contract applications, to protect tribal resources, to insure fair return on such resources and to assure a satisfactory standard of contract performance. The information for #1076–0091 is being collected to insure proper administration, monitoring and evaluation of contracts, as well as to protect Federal funds and the service recipient population. The information will be used to assess program performance, to monitor contract expenditures, and to insure fairness and uniformity of services, including the maintenance of current and accurate records which allow for clear audit facilitating data. Responses are required to obtain a benefit.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–13198 Filed 6–10–88; 8:45 am]

BILLING CODE 4310–02–M

---

25 CFR Part 69

Preparation of a Roll of Alaska Natives

February 17, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is removing Part 69 from Title 25 of the Code of Federal Regulations. Part 69 contains procedural rules governing the preparation of a roll of Alaska Natives under the Alaska Native Claims Settlement Act of 1971, as amended. The application and appeal processes for preparing the roll of Alaska Natives were completed in 1981 and the rule is no longer needed. This part has been

previously redesignated from 25 CFR Part 43h at 47 FR 13327, March 30, 1982.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Penny J. Coleman, Branch of Tribal Government and Alaska, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, Room 6456 Main Interior, 18th and C Streets NW., Washington, DC 20240, telephone number: (202) 343–8526 (FTS 343–8526).

SUPPLEMENTARY INFORMATION: The authority to issue these rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9. This final rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs in the Departmental Manual at 209 DM 8.

The regulations governing the preparation of a roll of Alaska Natives pursuant to section 5 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*, were promulgated in 1972 and amended in 1973, 1976, and 1978. In accordance with the Act's provisions for a comprehensive and final enrollment process, strict deadlines for applying for enrollment, appealing adverse determinations and disenrolling those erroneously placed on the roll were contained in the rule. The application process was completed in 1977, the disenrollment process ended in 1978 and the Department's determinations on appeals were completed in 1981. Since 1981 the Department has considered the roll of Alaska Natives to be final and has relied on the finality of the decisions made with regard to that roll to make a complete distribution of monies under ANCSA.

The procedural rule contained in 25 CFR Part 69 therefore has not been needed since 1981 and is being removed. As part of the removal of the rule, any and all delegations associated therewith are also hereby revoked.

The Department is taking this action to remove an obsolete rule from the Code of Federal Regulations. In addition, the Department is concerned that leaving the rule in the Code of Federal Regulations may have led, or may in the future lead, members of the public to conclude mistakenly that the processes of preparing the roll of Alaska Natives are not yet complete and that they may still apply for enrollment, appeal their denial of enrollment or request reconsideration of an earlier appeal decision. The Department wishes to emphasize that those enrollment, appellate and reconsideration processes were completed in 1981, and that neither ANCSA nor the regulations contained in Part 69 provide or authorize any extension or reopening of the processes after that date.

Prior notice, opportunity for public comment, and delay in the effective date are not required for the removal of the rule contained in 25 CFR Part 69 because the rule is procedural in nature. *See* 5 U.S.C. 553 (b)(A) and (d). In addition, public comment on the revocation of the rule is unnecessary because the rule is obsolete and is no longer needed. 5 U.S.C. 553(b)(B).

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 610 *et seq.* Because the application and appeal processes to prepare the roll of Alaska Natives have been completed, the revocation of the procedural rule governing the preparation of the roll is not expected to affect any party economically.

This rulemaking document does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The Department has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment and that neither an environmental assessment nor an environmental impact statement is required.

The primary author of this rulemaking document is Penny J. Coleman, Branch of Tribal Government and Alaska, Division of Indian Affairs, Office of the Solicitor, Department of the Interior.

List of Subjects in 25 CFR Part 69

Indians—enrollment, Indians—judgment funds.

PART 69—[REMOVED]

For the reasons set out in the preamble, Part 69 of Subchapter F of Chapter I of Title 25 of the Code of Federal Regulations is hereby removed.

Ross O. Swimmer,

Assistant Secretary-Indian Affairs.

[FR Doc. 88–13199 Filed 6–10–88; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1274–88]

Designation of Central or Competent Authority Under Treaties and Executive Agreements on Mutual Assistance in Criminal Matters

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 28 CFR 0.64–1 to authorize the Assistant Attorney General in charge of the Criminal Division to act as the central or competent authority under both treaties and executive agreements between the United States and other countries on mutual assistance in criminal matters that designate the Attorney General or the Department of Justice as such authority. Section 0.64–1 also authorizes the Assistant Attorney General in charge of the Criminal Division to redelegate his authority to his Deputy Assistant Attorneys General and to the Director of the Office of International Affairs. This final rule recognizes that both treaties and executive agreements on international mutual assistance may contain provisions requiring the performance of certain operational functions by a central governmental authority in the United States. The effect of the rule is to authorize the performance of those functions under either type of international agreement by designated individuals within the Criminal Division.

EFFECTIVE DATE: June 7, 1988.

FOR FURTHER INFORMATION CONTACT: Drew C. Arena, Director, Office of International Affairs, Criminal Division, Department of Justice, Washington, DC 20530; 202–786–3500.

SUPPLEMENTARY INFORMATION: The Assistant Attorney General in charge of the Criminal Division is currently authorized by 28 CFR 0.64–1 to act as the central or competent authority under treaties on mutual assistance in criminal matters between the United States and other countries and to redelegate his authority to his Deputy Assistant Attorneys General and to the Director of the Office of Intenational Affairs. This final rule expands the scope of 28 CFR 0.64–1 to encompass executive agreements, as well as treaties, on mutual assistance in criminal matters.

This rule is not a major rule within the meaning of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule

will not have a significant impact on small business entities.

List of Subjects in 28 CFR Part 0

International agreements, Treaties.

For the reasons stated in the preamble, Title 28, Chapter 1, Part 0, Subpart K of the Code of Federal Regulations is amended as set forth below.

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*, 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.64–1 is amended by revising the section heading and the first sentence of the section to read as follows:

§ 0.64–1 Central or Competent Authority under treaties and executive agreements on mutual assistance in criminal matters.

The Assistant Attorney General in charge of the Criminal Division shall have the authority and perform the functions of the "Central Authority" or "Competent Authority" (or like designation) under treaties and executive agreements between the United States of America and other countries on mutual assistance in criminal matters which designate the Attorney General or the Department of Justice as such authority.

* * * * *

Date June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88–13282 Filed 6–10–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–88–19]

Special Local Regulations for Chesapeake Bay Bridges Swim Race, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent special local regulations are adopted for the annual Chesapeake Bay Bridges Swim Race, an annual event held in June. An annual notice of the precise dates and times of the Chesapeake Bay Bridges Swim Race will be published in Local Notice to Mariners and **Federal Register** Notice. The special local regulations govern vessel activities during the swim race. The special local regulations are necessary to restrict general navigation in the regulated area. These regulations are needed to provide for the safety of life on the navigable waters during the event.

EFFECTIVE DATE: This regulation is effective on June 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804–398–6204).

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking in the **Federal Register** on April 18, 1988 (53 FR 12706). Interested persons were requested to submit comments. No comments were received. Good cause exists under 5 U.S.C. 553 for making this rule effective in less than 30 days after publication in the **Federal Register**. Delaying the effective date would result in a significant adverse impact on this year's swim, since the required safety for the swimmers would not be provided.

Drafting Information:

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments and Final Rule

No comments were received in response to the notice of proposed rulemaking. The regulations as proposed are adopted. By a separate document published elsewhere in this issue of the **Federal Register**, these regulations are made applicable to the 1988 Chesapeake Bay Bridges Swim Race that will be held on Sunday, June 12, 1988, between 8:00 a.m. and 11:15 a.m.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policy and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.507 is added to read as follows:

§ 100.507 Chesapeake Bay Bridges Swim Races, Chesapeake Bay, Maryland.

(a) *Definitions*—(1) *Regulated Area:* The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00′36″ North, longitude 76°23′05″ West and the eastern shore at latitude 38°59′14″ North, longitude 76°20′00″ West, and 500 yards sough of the south span of the bridge from the western shore at latitude 39°00′16″ North, longitude 76°24′30″ West and the eastern shore at latitude 38°58′38.5″ North, longitude 76°20′06″ West.

(2) *The Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the operator's vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer.

(c) *Effective period.* This section is effective during the Chesapeake Bay Bridges Swim, and for one hour before the event starts. The Commander, Fifth Coast Guard District publishes a notice in the **Federal Register** and the Fifth

Coast Guard District Local Notice to Mariners that announces the time and dates that the section is in effect.

Dated: June 1, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-13243 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 100

[CGD 05-88-29]

Special Local Regulations for Chesapeake Bay Bridges Swim Race, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.507.

SUMMARY: This notice implements 33 CFR 100.507 for the Chesapeake Bay Bridges Swim Race, an annual event to be held on June 12, 1988. These special local regulations are needed to provide for the safety of participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim.

EFFECTIVE DATES: The regulations in 33 CFR 100.507 are effective from 8:00 a.m. to 11:15 a.m. on June 12, 1988.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

Drafting Information:

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Fletcher Hanks, the Director of the Race, has submitted an application to hold the Chesapeake Bay Bridges Swim Race on June 12, 1988. Approximately 600 swimmers will start at Sandy Point State Park, swim between the William Lane Jr. Memorial Twin Bridges to the Eastern Shore. Since this event is the type of event contemplated by these regulations and the safety of the participants would be enhanced by the implementation of the special local regulations for the regulated area, the regulations is 33 CFR 100.507 (published elsewhere in this issue of the **Federal Register**) are being implemented.

Vessel traffic will be permitted to transit the regulated area as the swim progresses, and thus commercial traffic should not be severely disrupted at any time.

Dated: June 1, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-13244 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 100

[CGD 05-88-30]

Special Local Regulations for the Sixth Annual Intra-Harbor Power Boat Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Sixth Annual Intra-Harbor Power Boat Regatta. This event will be held on July 17, 1988, on the Elizabeth River, between the Norfolk and Portsmouth downtown areas. These special local regulations are needed to control vessel traffic within immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The effect will be to restrict general navigation in the Town Point Reach section of the Elizabeth River for the safety of the spectators and participants in the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 12:30 p.m. until 5:30 p.m. local time on July 17, 1988. If inclement weather causes the postponement of the event the regulations will be effective from 12:30 p.m. until 5:30 p.m. on September 17, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The regulations in 33 CFR 100.501 govern the operation of vessels during marine events held on the Elizabeth River in the vicinity of the "Waterside" area of downtown Norfolk, Virginia, and the "Portside" area of downtown Portsmouth, Virginia. The implementation of 33 CFR 100.501, also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and within one hour of the effective period under 33 CFR 100.501. These regulations are implemented by publication of this implementing notice in the **Federal Register** and a notice in the Local Notice to Mariners.

The Portsmouth Powerboat Association has submitted applications to hold the Sixth Annual Intra-Harbor Powerboat Regatta on July 17, 1988, in the area covered by 33 CFR 100.501. The event is being sponsored by Portsmouth Power Boat Association, Norfolk Festevents, Inc. and the City of Portsmouth.

Since this event is the type of event contemplated by these regulations and the safety of the participants and spectators viewing the event would be enhanced by the implementation of 33 CFR 100.501, those regulations are being implemented.

Date: June 1, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-13246 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 100

[CGD 05-88-33]

Special Local Regulations for Harbor Expo Powerboat Races

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Harbor Expo Powerboat Races to be held on June 18 and 19, 1988, on the waters of the Middle Branch, Patapsco River west of the Hanover Street Bridge, Baltimore, Maryland. It will consist of approximately 45 outboard powerboats racing a designated course within the regulated area. The special local

regulations will govern vessel activities during the powerboat races. The regulations are necessary due to the potential danger of the waterway users, the confined nature of the waterway, and the expected spectator craft congestion during the event.

EFFECTIVE DATES: These regulations are effective from 8:00 a.m. until 7:00 p.m., local time, on June 18 and 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until May 23, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide delayed effective date.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The International Outboard Grand Prix is the sponsor of this event. The event will consist of approximately 45 powerboats, ranging from 14 to 18 feet in length, racing on a designated course within the regulated area, on the waters of the Middle Branch, Patapsco River, west of the Hanover Street Bridge. The races will consist of a series of heats. A section of the Middle Branch, Patapsco River, approximately 650 yards west of the Hanover Street Bridge will be closed during the races, except that between heats the Coast Guard Patrol Commander will stop the races to allow vessel traffic to transit the regulated area. Since the waterway will not be closed for extended periods, waterborne traffic should not be severely disrupted.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0533 is added to read as follows:

§ 100.35-0533 Middle Branch, Patapsco River, Baltimore, MD.

(a) *Definitions*—(1) *Regulated area:* The regulated area is bounded by a line drawn from latitude 39°15'39.0" North, longitude 76°37'07.0" West, to latitude 39°15'39.0" North, longitude 76°37'27.0" West, thence to latitude 39°15'22.0" North, longitude 76°37'07.0" West, thence to latitude 39°15'22.0" North, longitude 76°37'07.5" West, and thence to the beginning point.

(2) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a Coast Guard commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special local regulations*—(1) Except for participants in the Harbor Expo Powerboat Races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop his vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer onboard a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant or petty officer.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area at any time a race heat is not being run.

Effective Dates: These regulations are effective from 8:00 a.m. until 7:00 p.m., local time, on June 18 and 19, 1988.

Dated: June 1, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-13245 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80349-8122]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NOAA issues an emergency interim rule amending the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The rule provides for recordkeeping and reporting of the incidental take and mortalities of sea turtles as required by the Endangered Species Act (ESA).

EFFECTIVE DATES: This rule is effective June 8, 1988 through July 31, 1988.

ADDRESSES: Copies of documents supporting this action may be obtained from Michael E. Justen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the reporting requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

Requests for reporting forms, sea turtle identification guides, and resuscitation techniques should be sent to the Director, Galveston Laboratory, NMFS, Avenue U, Galveston, TX 77550.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The amended FMP and current regulations provide for a seasonal closure to shrimping in the exclusive economic zone (EEZ) off Texas not to exceed 60 days, nor be less than 45 days. The objective of this closure is to delay the harvest of small brown shrimp until they reach a larger, more valuable size.

The regulations implementing an identical closure in 1987 contained a reporting requirement for shrimp fishermen whenever an endangered or threatened sea turtle was incidentally taken while trawling off Texas outside of the closed area. This incidental take data is required under section 7(b)(4) of the ESA (16 U.S.C. 1531, *et seq.*). On May 25, 1988 (53 FR 18840), a final rule was published providing for an identical closure from June 1 through July 15, 1988. NOAA expected that regulations requiring the use of turtle excluder devices (TEDs) under the Endangered

Species Act would be in effect during the closure, and therefore no reporting requirement was necessary in the proposed rule (53 FR 12046, April 12, 1988). A restraining order temporarily enjoining the TED regulations came into effect after the proposed rule was filed with the Office of the Federal Register.

This information collection is essential for purposes of protecting and conserving affected sea turtle populations. Efforts have been made to minimize the burden on potential respondents by limiting the requirement to submit a report only to those fishermen who actually take turtles, rather than to all fishermen operating under the regulations. We anticipate that no more than 12 reports will be submitted.

The 15-mile closure is scheduled from June 1 through July 15, 1988. To meet this deadline and to provide adequate protection to sea turtles as required by the ESA, no further opportunity for public hearings and public comment can be provided. Because the reporting requirement is identical to that in the 1987 closure regulations, there is little adverse impact on the affected public.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause (i.e., to implement the data collection required by the ESA in a timely fashion) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide advance opportunity for comment upon this emergency interim rule, or to delay for 30 days its effective date, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been approved by the Office of Management and Budget under OMB Control Number 0648-0176.

The Gulf of Mexico Fishery Management Council prepared an environmental assessment for this rule and the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the environmental assessment is available (see **ADDRESSES**).

The Assistant Administrator determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. Texas, the only State involved, does not have an approved coastal zone management program.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.5, a new paragraph (c) is added, to be effective from June 8, 1988 through July 31, 1988, to read as follows:

§ 658.5 Reporting requirements.

* * * * *

(c) *Texas closure.* The owner or operator of any fishing vessel that fishes for or lands shrimp or any part thereof during the time of the Texas closure described at § 658.25(c) off Texas west of a line connecting point A (29°32.1′ N. latitude, 93°47.7′ W. longtitude) to point B (26°11.4′ N. latitude, 92°53.0′ W. longtitude), as shown in Figure 3, and who incidentally takes any endangered or threatened sea turtle, must provide the following information regarding any fishing trip to the Director, Galveston Laboratory, NMFS, 4700 Avenue U, Galveston, TX 77550, telephone 409-766-3500, within 24 hours after landing:

(1) Date;

(2) Shrimp vessel name;

(3) Species of turtle caught:

(i) Loggerhead;

(ii) Kemp's redley; or

(iii) Other (specify, see turtle identification guide).

(4) Status of turtle when released:

(i) Alive; or

(ii) Dead.

(5) Did the turtle have a tag?

(6) If so, what was the tag number?

(7) Coordinates of capture (loran readings or latitude and longitude).

(8) Approximate tow time; and

(9) Additional comments.

[FR Doc. 88-13260 Filed 6-8-88; 4:53 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Humbug Mountain, Oregon, to Punta Gorda, California, at midnight, June 7, 1988, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife (ODFW), and the California Department of Fish and Game (CDFG) that the available commercial fishery quota of 63,000 chinook salmon for the area will be accounted for by that time. The closure is necessary to conform to the preseason announcement of 1988 management measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: Closure of the EEZ from Humbug Mountain, Oregon, to Punta Gorda, California, to commercial salmon fishing is effective at 2400 hours local time, June 7, 1988. Comments on this closure will be accepted until June 23, 1988.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, or E. Charles Fullerton at 213-514-6196.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational

fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 commercial fishery for all salmon species in the subarea from Humbug Mountain, Oregon, to Punta Gorda, California, was established as June 5 through the earlier of June 28 or the attainment of the chinook or coho quota. In its preseason announcement of 1988 management measures, NOAA announced that the commercial fishery from Orford Reef Red Buoy, Oregon, to Horse Mountain, California, would be managed not to exceed a quota of 63,000 chinook salmon through August 31, 1988. The 63,000 chinook salmon quota applies to the areas from Orford Reef Red Buoy, Oregon, to Horse Mountain, California, but the subareas from Orford Reef Red Buoy, Oregon, to Humbug Mountain, Oregon, and from Horse Mountain, California, to Punta Gorda, California, are closed for the entire season, so fishing has occurred only from Humbug Mountain, Oregon, to Punta Gorda, California. Out of the 63,000 chinook quota, only 40,450 were available in this fishery because a total of 22,550 fish were deducted for other fisheries. These fisheries are outlined below:

(1) The commercial fishery for all salmon except coho in the subarea from Sisters Rocks to Chetco Point, Oregon, which closed in Federal waters on May 4, 1988 (53 FR 16415, May 9, 1988), had actual landings totaling 8,850 chinook salmon.

(2) The State of California authorized a special commercial fishery in territorial water (0–3 miles) near Shelter Cove (i.e., between Horse Mountain and Cape Vizcaino, California) during May which was inconsistent with the preseason notice of 1988 management measures. In order to account for this fishery, the number of chinook salmon harvested which had impacts on the Klamath River Management Zone, (i.e., 6,200 fish), are being counted toward the overall chinook quota as provided by § 661.20(a)(3).

(3) The commercial fishery for all salmon except coho in the subarea from Sisters Rocks to Mack Arch, Oregon, is scheduled to open August 15, 1988, with a reserved subarea quota of 7,500 chinook salmon.

Based on the best available information, the commercial fishery catch in the subarea from Humbug Mountain to Punta Gorda is projected to reach the 40,450 fish remaining in the overall chinook quota of 63,000 fish by midnight, June 7, 1988.

Therefore, NOAA issues this notice to close the commercial salmon fishery in the EEZ from Humbug Mountain, Oregon, to Punta Gorda, California, effective 2400 hours local time, June 7, 1988. This fishery will remain closed until further notice to evaluate landings. As provided by the regulations at § 661.21(a)(2), the Secretary of Commerce will reopen the fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours. This closure does not affect the commercial fishery for all salmon except coho in the subarea from Sisters Rock to Mack Arch, Oregon, which is scheduled to open August 15, 1988. This notice does not apply to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the NMFS Southwest Regional Director and representatives of the Pacific Fishery Management Council, ODFW, and CDFG regarding a closure of the commercial fishery between Humbug Mountain, Oregon, and Punta Gorda, California. The ODFW and CDFG representatives confirmed that Oregon and California will close the commercial fishery in state waters adjacent to this subarea at midnight, June 7, 1988.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

16 U.S.C. 1801 *et seq.*

Dated: June 8, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–13292 Filed 6–8–88; 5:04 pm]

BILLING CODE 3510-22-M

---

50 CFR Part 663

[Docket No. 70750-7248]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: This document modifies the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) which governs domestic and foreign fishing for groundfish in the exclusive economic zone off the coasts of Washington, Oregon, and California. The rulemaking is necessary for enforcement purposes and to reconcile certain inconsistencies between Federal and State groundfish regulations. It is intended to improve coordination between Federal and State management jurisdictions and to strengthen enforcement of domestic groundfish regulations.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region, NMFS), 206–526–6150; or E. Charles Fullerton (Director, Southwest Region, NMFS), 213–514–6196.

SUPPLEMENTARY INFORMATION: Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) on January 4, 1982. The FMP has been amended twice. Implementing regulations governing domestic fishing are codified at 50 CFR Part 663.

This rulemaking changes the Federal groundfish regulations to facilitate enforcement and to resolve inconsistencies between Federal and State regulations. The Council discussed this rule and recommended it to the Secretary at its September 1986 meeting.

The rule contains three changes to the groundfish regulations which are described below.

Issue 1—Processing inspection. The rule clarifies the authority of authorized officers to enter buildings, vehicles, piers, or dock facilities where groundfish may be found by making it unlawful for a person in control to refuse such entry.

Issue 2—False statements. The rule prohibits making any false statement, oral or written, to an authorized officer about the taking, catching, harvesting, possession, landing, purchase, sale or transfer of groundfish.

Issue 3—Gear and catch inspection. The rule makes it unlawful to refuse to submit fishing gear or catch under a person's control to inspection by an authorized officer or to interfere with or prevent, by any means, such an inspection.

This rule was proposed in the **Federal Register** on August 7, 1987 (52 FR 29400), and public comments were requested until September 8, 1987. No comments were received.

One comment was submitted for a similar rule proposed for the Fishery

Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (52 FR 19744, May 27, 1987) which is also relevant to this rulemaking. The commenter recommended for the issue on gear inspection that "catch" as well as "fishing gear" be subject to the prohibition since there have been numerous instances when fishermen have been able to frustrate investigations by throwing illegal catch overboard. NOAA agrees with the need to add "catch" to the prohibition in this rulemaking. However, NOAA prefers to define "catch" as "fish under a person's control" in order to incorporate the term "fish" as defined in the Magnuson Act and thus clearly define what is meant.

Classification

NOAA issues this rule, under authority of section 305(g) of the Magnuson Act, to facilitate enforcement and to reconcile inconsistencies between Federal and State fishery regulations.

This action is not expected to alter the nature of intensity of environmental impacts which were addressed in the supplemental environmental impact statement (SEIS) prepared by the Council for the FMP or in the environmental assessments for the two amendments to the FMP. Notices of a availability of the SEIS and environmental assessments were published on February 12, 1982, 47 FR 6483; March 20, 1984, 49 FR 10318; and October 31, 1986, 51 FR 39766; respectively.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities.

This rule does not contain a collection of the information requirement for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 7, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 663 is amended as follows:

PART 663—[AMENDED]

1. The authority citation for Part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.2, the definition of "areas of custody" is added in alphabetical order to read as follows:

§ 663.2 Definitions.

* * * * *

Areas of custody means any vessels, building, vehicles, piers, or dock facilities where fish may be found.

* * * * *

3. In § 663.7, paragraph (b) is revised, the period following paragraph (o) is changed to a semicolon, and new paragraphs (p) and (q) are added to read as follows:

§ 663.7 General prohibitions.

* * * * *

(b) To refuse to allow an authorized officer to board a fishing vessel, or to enter areas of custody, subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

* * * * *

(p) To make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, possession, landing, purchase, sale, or transfer of any fish; or

(q) To refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

[FR Doc. 88-13259 Filed 6-10-88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 113
Monday, June 13, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[Docket No. AO-231-A55]

Milk in the Texas Marketing Area; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative decision would provide transportation credits to handlers for hauling excess producer milk to nonpool plants located outside the State of Texas. The credits would represent a partial reimbursement of hauling costs from the order's marketwide pool. Such credits would apply during the months of March-June and the last half of December and would be limited to milk going into Class II and Class III uses. The credits would be computed at a rate of 2.4 cents per 10 miles. Credits would be limited to handlers who transfer milk from plants located in Zone 1 of the marketing area while credits on milk that is moved directly from farms to nonpool plants would be limited to milk produced in northern Texas and southern Oklahoma. Handlers would also receive a credit to recognize costs associated with hauling milk from higher- to lower-priced areas. The amount of milk to which transportation credits apply would be reduced to the extent that a handler or affiliate of the handler caused milk from outside the State of Texas to be received at plants in the marketing area.

The changes to the order, which are based on proposals considered at a public hearing held on February 2–3, 1988, in Irving, Texas, are necessary to partially compensate handlers for transportation costs incurred in clearing the market of surplus milk production that exceeds local manufacturing capacity.

DATE: Comments are due on or before July 13, 1988.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers and partially compensate handlers for costs incurred in providing a service of marketwide benefit.

Prior document in this proceeding:

Notice of Hearing: Issued December 30, 1987; published January 6, 1988 (53 FR 256).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Texas marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments and findings and conclusions set forth below are based on the record of a public hearing held at Irving, Texas, on February 2–3, 1988, pursuant to a notice of hearing issued December 30, 1987 (53 FR 256).

The material issues on the record of hearing relate to:

1. Credits to handlers for transporting surplus producer milk; and
2. Whether emergency marketing conditions exist with respect to issue number 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Credits to handlers for transporting surplus producer milk.* The Texas order should be amended to provide transportation credits to handlers for hauling (transferring or diverting) surplus producer milk to nonpool plants located outside the State of Texas for Class II and Class III use during the months of March-June and the last half of December. The credits would represent a partial reimbursement of hauling costs from the order's marketwide pool. Such credits should be computed at a rate of 2.4 cents per hundredweight for each 10 miles, or fraction thereof, for the shortest hard-surfaced highway distance to nonpool plants, as determined by the market administrator, from the nearer of several locations. A transfer credit should apply to bulk fluid milk products transferred by a handler from a pool plant located in Zone 1 of the marketing area for the distance between the transferor pool plant and the transferee nonpool plant. A credit for diverted milk should apply to milk produced in Zones 1, 1–A, or 3 of the marketing area or 19 southern Oklahoma counties that is diverted from a pool plant to a nonpool plant that is in excess of 100 miles from the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the load, or the courthouse of the county where the major portion of the milk on the load

was produced. In addition, a credit for diverted milk should also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustments) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received. No credit should apply to the total quantity of milk moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I. Also, the amount of milk to which a credit would be applicable during the month should be reduced by the amount of milk that the handler or any affiliate of the handler causes to be received at plants in the marketing area from outside the State of Texas during the month. Such offset should be applied in sequence beginning with the nonpool plant at which the greatest credit would have applied.

The order provisions contained herein to provide transportation credits to handlers are patterned after the proposals that were contained in the hearing notice with modifications that were supported at the hearing to limit the application of any such credits. The modifications are necessary so that Texas order producers would not be inordinately burdened with the cost of disposing of surplus milk associated with other markets, or costs associated with inefficient marketing practices that might be encouraged by the implementation of such credits. The provisions are contained in a new section of the Texas order and carry out the major objectives of the proposals to partially compensate handlers for costs incurred in performing a service of marketwide benefit for producers, namely, the additional cost of hauling surplus milk to distant nonpool plants that is in excess of local manufacturing capacity.

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents about two-thirds of the producers who supply the Texas market, proposed that the order be amended to provide for a change in the location at which diverted milk is priced and to reimburse handlers from the producer-settlement fund for costs incurred in transporting surplus milk supplies to alternative outlets during certain months. Specifically, AMPI proposed that milk diverted from farms of producers located in Zone 1 or 3 of the marketing area to nonpool plants located outside the State of Texas be priced as if such milk were received at Dallas, Texas (Zone 1). For milk diverted from farms of producers located in Zone 1–A of the marketing area or in any of 19 southern Oklahoma counties to nonpool plants located outside Texas and southern Oklahoma, AMPI proposed that such milk be priced as if such milk were received at a plant in southern Oklahoma (28 cents less than Class I and blend prices announced in Zone 1 of the Texas order.) The proposed change in the point of pricing for diverted milk would apply during all months of the year.

AMPI also proposed that transportation credits be provided to handlers from the producer-settlement fund for hauling excess milk to nonpool plants outside Texas for Class II and Class III uses during the months of March-June and December of each year. Under the proposals, a transportation credit would apply to the pounds of bulk fluid milk products transferred from a pool plant or diverted from farms of producers located in Zone 1 or 3 of the marketing area to nonpool plants outside Texas at the rate of 3.3 cents per hundredweight for each 10 miles that the nonpool plant is located more than 90 miles from Dallas. AMPI also proposed that such credit apply to the pounds of producer milk diverted from farms located in Zone 1–A of the marketing area or 19 southern Oklahoma counties to nonpool plants located outside Texas and southern Oklahoma that are in excess of 110 miles from the nearer of Burkburnett, Texas or Sulphur, Oklahoma.

AMPI testified that the purpose of the proposed amendments is to provide for a greater degree of equity among all producers in the sharing of the high costs associated with handling surplus milk under the Texas order. AMPI testified that, under current provisions, its producer members bear a disproportionate share of the costs of balancing the fluid milk needs of the market in that its members represent two-thirds of the producer milk while AMPI handles over 80 percent of the Class III producer milk on the market. AMPI testified that of the 30 distributing plants on the market, 14 are totally supplied by the cooperative, 13 are partially supplied by it and three are not supplied by AMPI. In some cases AMPI is a partial supplier on a year-round basis while in other instances AMPI supplies supplemental milk only during the fall months of the year. In total AMPI claims that it balances, to various degrees, the milk supplies of all pool distributing plants on the Texas market.

AMPI also testified that substantial increases in production during the last half of 1987 have resulted in supplies far in excess of the capacity of all plants in the marketing area, which has increased the cost of handling surplus milk. For example, AMPI referred to data released by the market administrator concerning production increases for the State of Texas. For the months of July through December 1987, Texas production (about 94 percent of which is pooled on the Texas market) averaged 10.1 percent above a year earlier. For December 1987, Texas production was up 14.8 percent while milk production in the top ten milk producing counties was up by 20.5 percent. AMPI noted that such counties represented 58 percent of total state production and 62 percent of the Texas production pooled under the order and that all of these counties are located in Zone 1, 1–A or 3 of the marketing area.

In addition to including the major milk producing areas in the marketing area, AMPI testified that 19 southern Oklahoma counties also should be included within the scope of its proposals. AMPI testified that milk produced in such area has historically been associated with the Texas market. For example, AMPI testified that for 1985, 71 percent of the 115 million pounds of milk originating in such area was received at pool plants while 29 percent was diverted to nonpool plants outside Texas. The monthly proportion delivered to pool plants ranged from a high of 96 percent to a low of 47 parcent during the year. In 1986, 58 percent of 112 million pounds from this area was received at pool plants, ranging from a high of 90 percent to a low of 35 percent on a monthly basis. In 1987, 48 percent of 113 million pounds was received at pool plants, ranging from 79 percent to 20 percent monthly during the year. AMPI testified that when milk must be diverted off the market, usually milk produced in southern Oklahoma would be the first to be moved and that the producers would receive either a Dallas (Zone 1) or Burkburnett (Zone 1–A) location blend price for their milk.

AMPI testified that its balancing functions and the increases in production have resulted in an increasing volume of surplus milk to be handled by AMPI. For example, AMPI testified that for 1985, it handled 503 million pounds of surplus milk produced in southern Oklahoma and Zones 1, 1–A and 3 of the marketing area. Of this total, 92 percent was processed at AMPI's pooled manufacturing plants located in Zone 1 at Muenster and Sulphur Springs, Texas (Zone 1), while the remaining 39 million pounds was diverted to nonpool plants outside Texas, mainly to other AMPI plants at Oklahoma City and Tulsa, Oklahoma.

AMPI testified that during 1986 the amount of surplus milk increased to 576 million pounds (14 percent increase) with 488 million pounds being processed at Muenster and Sulphur Springs (85 percent) and the remainder being diverted or transferred from the manufacturing plants to nonpool plants outside Texas. For 1987, the amount of the surplus increased to 775 million pounds (a 35 percent increase) with 75 percent being processed at its two Texas manufacturing plants and 155 million pounds being diverted (double that of the previous year) and 35 million pounds (a fourfold increase) being transferred to nonpool plants outside Texas. AMPI testified that large increases in production during the spring are normal, but, that the substantial increase during the fall months of 1987 is of major importance in the volume processed at Muenster and Sulphur Springs and in milk diverted and transferred off the market during such period when the Texas market is usually deficit.

AMPI testified that the increasing volume of milk handled by the cooperative has resulted in substantial increases in the cost of surplus disposal that is borne by the producer members of the association. AMPI testified that the increased costs are a result of the pricing of surplus milk at the plant to which it is diverted and the additional transportation costs of hauling milk to distant outlets. For example, AMPI testified that losses on milk diverted from southern Oklahoma averaged just over 45 cents per hundredweight for 1986 and just over 49 cents per hundredweight during 1987. About two-thirds of such losses were a result of the minus location adjustments that applied at the nonpool plants to which the milk was diverted and one-third from additional hauling costs to such outlets. Losses on milk diverted from the three zones in the Texas marketing area averaged $1.44 per hundredweight in 1986 and just under $1.45 per hundredweight during 1987 with about one-half of such losses being attributed to location adjustments and one-half to extra hauling costs. In total, AMPI testified that its losses on diverted milk were about $254 thousand in 1985, $677 thousand in 1986, and over $1.6 million for 1987. In addition, AMPI testified that it lost an additional $108 thousand in 1986 on milk transferred from its Zone 1 pooled manufacturing plants to nonpool plants outside Texas and about $503 thousand for 1987. AMPI testified that such losses were borne exclusively by its producer members while the benefits of such market clearing activities accrued to all producers and handlers.

AMPI testified that the proposed revision of the producer milk definition to change the pricing point on diverted milk during all months of the year would partially restore equity among all producers who supply the market. AMPI indicated that the value of negative location adjustments (which currently apply at the nonpool plants to which AMPI diverts milk) on producer milk is added to the total pool value of milk in computing the Zone 1 announced uniform price. AMPI testified that the uniform price is thus enhanced because of the minus location adjustments and nonmember producers receive a higher value for their milk. AMPI noted that its member producers also benefit from such higher price, but that they carry the total losses and therefore receive a lower than average return for their milk.

AMPI also testified that the underlying assumptions that provide the basis for pricing milk at the plant to which it is diverted are no longer applicable. According to AMPI, the basis for the lower value of milk at distant manufacturing plants in the production area is that the producers whose milk is shipped to such plants would incur a lesser hauling cost than if their milk were shipped further to distributing plants. AMPI contends that such situation no longer exists since there are no savings in hauling costs when milk must be diverted from Texas and southern Oklahoma to manufacturing plants outside the State of Texas. AMPI contends that the cost of hauling milk that must be diverted to distant nonpool plants is greater than the cost of hauling milk from farms to Texas distributing plants. AMPI also testified that it makes every effort to minimize transportation losses by utilizing the milk of producers located nearest to distributing plants to fulfill the needs of such plants while diverting the milk of more distant producers to manufacturing plants. However, AMPI testified that it is prevented from doing this in certain instances by the terms of other order provisions. In particular, AMPI noted that during the months of September through January at least 15 percent of each producers milk must be delivered to pool plants during the month in order to qualify milk diverted to nonpool plants as producer milk.

AMPI testified that during the months of March–June and December the production of milk within the Texas marketing area exceeds the requirements of distributing plants and that the resulting surplus is beyond the capacity of surplus processing plants in the marketing area. Thus, AMPI testified that during such months handlers should receive a reimbursement out of the producer-settlement fund for costs incurred in transporting such surplus production to nonpool plants outside Texas. AMPI further testified that the Food Security Act of 1985, which amended the Agricultural Marketing Agreement Act of 1937, as amended, provides specific authority for such action. AMPI further testified that the proposal would result in a more equitable sharing among all producers of the costs of handling excess milk supplies. AMPI testified that it would be unfair to make only those producers whose milk must be moved, or those producers whose milk must be moved greater distances because of a lack of nearby plant capacity, to bear the entire additional hauling cost when all producers contribute to the amount of surplus milk. Thus, AMPI concludes that the proposal would be an extension of marketwide pooling whereby all producers share in the proceeds from the sale of milk for fluid uses and the burden of maintaining the reserve supply of milk that is necessary to meet fluid milk needs. Under current conditions of excess supply, AMPI maintains that marketwide pooling does not achieve equity among producers and that therefore disorderly marketing conditions exist.

In support of its proposed rate for determining the amount of the credit to handlers, AMPI introduced the actual hauling costs incurred during 1986 and 1987. Such costs ranged from $1.50 to $1.80 per loaded mile which reflects rates from 3.2 to 3.9 cents per hundredweight per 10 miles. AMPI testified that the lower rates were for hauls with its own equipment while the higher rates were for contract haulers. AMPI testified that it is expected that the use of contract haulers would increase because of the greater amount of surplus milk that must be handled. Nevertheless, AMPI revised its originally proposed 3.6-cent per hundredweight rate to 3.3 cents.

AMPI testified that the credit be calculated on the mileage involved that exceeds the normal farm-to-market distance when supplying the Class I outlets. In this regard, AMPI referred to statistics provided by the market administrator concerning the weighted average distances of milk movements to fluid milk plants located in the pricing zones of the marketing area during two months of 1987. AMPI testified that since milk was moved an average of about 84 miles to supply Zone 1 distributing plants, handlers should

receive a credit for milk produced in Zones 1 and 3 to the extent that such milk is transported to nonpool plants located more than 90 miles from Dallas. For milk produced in Zone 1–A or southern Oklahoma, AMPI revised its original 75-mile limitation upward to 110 miles for credit purposes because the weighted average distance of milk shipments to the distributing plant in Zone 1–A (Burkburnett) exceeded 116 miles. Also, AMPI testified that most of the supply for the distributing plant in Zone 1–A originates in Oklahoma at distances from 101 to 150 miles away from the plant and that milk originating in southeastern Oklahoma (Sulphur) is about 110 miles from Dallas. By incorporating such mileage limitations in the proposal AMPI testified that handlers would be reimbursed only for costs incurred in hauling milk in excess of the costs normally paid by producers to haul milk to their Class I outlet.

AMPI testified that credits should apply to handlers for bulk fluid milk products transferred or diverted to nonpool plants located outside the normal delivery area for Class II or Class III use, rather than only Class III use as would be provided by an alternative proposal. AMPI testified that some of the nonpool plants available have both Class II and Class III operations and that if the alternative proposal was adopted a credit could apply to part of the milk on a load and not to the rest, depending on the classification at the receiving plant. AMPI testified that the cost of hauling the milk would be the same, regardless of the classification. AMPI further testified that the order permits milk diverted to an other order plant to remain pooled under the Texas order so long as all of the milk is classified as Class II or Class III and, thus, the same criteria should apply in determining the amount of hauling credit allowed.

AMPI's proposals were supported by Mid-America Dairymen, Inc., a cooperative association that represents about 15 percent of the producers who supply the Texas market. Southern Milk Sales, Inc., another cooperative association that represents producers who supply the market, testified that if hauling credits are adopted they should apply to milk moved to any location outside Texas. Such testimony was directed to a proposal by handlers that would limit the credit to only northward movements of milk. One proprietary fluid milk handler also supported the proposals in its brief so long as any amendment would assure that sufficient supplies of milk would first be made available to distributing plants.

A group of 10 handlers (Southland Corporation; Baker and Sons Dairy, Inc.; Borden, Inc.; Blue Bell Creameries, Inc.; Dairy Fresh, Inc.; Dean Foods Company; Hygeia Dairy Company; Kinnett Dairies, Inc.; Malone & Hyde Dairy; and Southern Belle Dairy, Inc.) who operate plants in Texas and in various southeastern markets proposed alternatives to the AMPI proposals. The handler's proposals would provide for a lesser hauling credit rate (2.0 to 2.2 cents per 10 miles), a greater distance that milk would have to move before a credit would apply along with the use of more northern basing points to determine such distance, and the application of such credits to only milk that is moved in a northern direction to plants outside Texas. The handlers also proposed that credits should not apply during the first half of December, that credits should not apply to milk produced in Oklahoma and that credits should not apply to milk moved out of Texas if milk was being received in Texas from outside areas during the same month.

The handlers testified that the purpose of the more restrictive proposals is to lessen potential abuses of a transportation credit and to address equity considerations between Texas producers and producers under other orders. They testified that the lower credit rate is intended to assure that there would be no hauling profits that would encourage the hauling of milk further than necessary and to provide no greater hauling incentive for surplus milk than what is provided for hauling milk for fluid use within the Texas marketing area. They also testified that the greater mileage before a credit applies, and the use of more northern basing points to determine such mileage, is intended to prevent a hauling credit for a greater distance than the actual hauling distance. The handlers also testified that a credit should apply only to northward movements of milk to prevent Texas surplus milk from utilizing scarce manufacturing capacity in the Southeast, with the result that displaced surplus milk in the Southeast would then have to be shipped greater distances for disposal, and without a transportation credit. The handlers further testified that a transportation credit for only the last half of December is intended to recognize that milk production normally exceeds the fluid requirements of distributors only during the latter part of the month, while additional supplies are normally needed by distributors during the beginning of the month in preparation for the holiday sales period. The handlers also testified that transportation credits should not apply to milk produced in Oklahoma or to milk shipped out of Texas while milk is being received from outside Texas to prevent Texas producers from bearing the cost of disposing of surplus milk associated with other states and markets. The handlers are particularly concerned that the implementation of any transportation credits for the Texas order could encourage uneconomic movements of milk from other areas to Texas thereby utilizing Texas manufacturing capacity and forcing Texas milk to be hauled to distant manufacturing plants. Handlers contend that Texas producers should not be required to bear the cost of such uneconomic movements of milk.

Handlers also proposed that the change in the point of pricing on diverted milk be limited to those months for which a transportation credit was proposed (rather than year-round as proposed by AMPI), although there was little testimony on this aspect of the proposal. Also, there was virtually no testimony on the handlers' proposal to apply transportation credits to only Class III uses, rather than Class II and Class III uses as proposed by AMPI.

Although handlers presented an alternative to AMPI's proposal, their primary position (expressed both in testimony and in post-hearing briefs) is that no change should be made to the Texas order to accommodate the hauling of surplus milk. Handlers contend that the Texas order carries the reserve milk supplies for other Federal order markets and, as a result, the proposals should be denied for essentially the same reasons that marketwide service payment proposals were denied for several Federal order markets in the Southeast. In this regard, official notice is taken of the Assistant Secretary's final decision concerning the Georgia and certain other marketing areas issued on April 28, 1987 and published on May 1, 1987 (52 FR 15951).

Also, in briefs filed by a number of parties, it is argued that AMPI has been able to recover its seasonal balancing costs through over-order prices and that AMPI does not carry a disproportionate share of the Class III use on the market considering the amount of surplus associated with other markets that is pooled under the Texas order. Such parties argue that AMPI is transporting its own surplus to nonpool plants outside Texas and that such activity is not a service of marketwide benefit to all producers and, therefore, it would not be appropriate to implement a transportation credit that would require all producers to subsidize AMPI's marketing problem. Furthermore, a brief

filed on behalf of three handlers argues that previous Department policy set forth in a previous decision to implement transportation credits establishes that a demonstrated service of marketwide benefit is a prerequisite to implementing a transportation credit. In this regard, official notice is taken of the Assistant Secretary's final decision for the Georgia and certain other marketing areas issued on March 30, 1983 and published April 5, 1983 (48 FR 14604).

Also, in their briefs, a number of parties argued that the proposed pricing change on diverted milk would distort the location value of milk and result in non-uniform prices to handlers. They further contend that such pricing is not consistent with the requirements of the Agricultural Marketing Agreement Act of 1937, as amended, since milk would be priced on the basis of where it is produced or normally received rather than at the location where it is physically received.

Two cooperative associations (the National Farmers Organization and the Farmers Union) that do not represent any producers under the Texas order testified in opposition to the adoption of any transportation credits. They contend that if the transportation of surplus milk is subsidized, such milk would displace other milk at northern manufacturing plants, would undercut prices at such plants, and would place downward pressure on manufacturing milk values to the detriment of all producers. The cooperatives contend that it would be inequitable for all producers to have to bear the cost of disposing of Texas surplus milk while Texas producers are benefitting from a Congressionally-mandated higher Class I differential. They contend that the increased returns from the significantly higher differential (which they also contend has encouraged excess milk production in Texas) should be used by AMPI to offset its surplus disposal costs. In addition, in a brief filed on behalf of the National Farmers Organization it is argued that prior decisions of the Department establish that a regional view must be taken when evaluating the equity of proposals intended to compensate handler expenses. In this regard, the brief refers to the previously officially noticed 1987 decision that denied credits for the performance of marketwide services and a 1984 decision that denied a proposed credit for milk in Class III uses under the Texas order. Consequently, official notice is taken of the Assistant Secretary's final decision for the Texas market issued on May 14, 1984 and published on May 17, 1984 (49 FR 20825).

A brief was also filed on behalf of a number of producers under the Texas order who market their milk independently to handlers who operate plants under the Texas order. The producers oppose the implementation of transportation credits. They contend that they are already receiving a reduced blend price because AMPI pools the surplus of other markets under the Texas order, that AMPI is already recovering its balancing costs, and that AMPI has a cost advantage in disposing of surplus milk because its manufacturing pool plants are located near to the source of heavy milk production.

There is no dispute on the record of the proceeding that the dramatic increases in Texas production testified to by AMPI will mean market surpluses in excess of the capacity of manufacturing plants located in the marketing area, particularly during the months of March–June and December. These months have traditionally represented the period of the greatest Class III use of producer milk under the order. During the month of December 1987, the most recent month for which data is included in the record that illustrates the magnitude of the surplus problem, over 60 million pounds of milk produced in the major production areas of the Texas marketing area and southern Oklahoma was processed at AMPI's two pooled manufacturing plants. During the same month, more than 28 million pounds of producer milk was transferred or diverted to nonpool plants outside Texas for surplus disposal. With normal seasonal increases in production, it is likely that the amount of milk in excess of local plant capacity will exceed 45 million pounds per month during the current flush production season.

When milk production exceeds all available nearby plant capacity, such excess production must either be dumped or transported at handler expense to alternative outlets. There is little way that AMPI, or any other handler, can recover the additional cost of hauling such milk to distant plants for surplus disposal. The Act authorizes a transportation credit to handlers from pool funds who perform this service if it is of marketwide benefit. Such service is of marketwide benefit to all producers on the Texas market since the amount of milk produced by all such producers contributes to the amount of surplus milk that cannot be accommodated at existing plants. Thus, the implementation of the transportation credits included herein will result in all producers bearing a portion of the additional hauling costs incurred by handlers in marketing surplus milk. The issuance of such credits is an extension of the marketwide pooling concept wherein all producers share the benefits of the fluid milk sales and the costs of maintaining reserve milk supplies.

As previously stated, a number of parties opposed the issuance of any transportation credits, regardless of the marketing problems confronting Texas handlers as a result of the increases in production by producers. They contend that the proposals should be denied because: (1) The Texas market carries the reserve supplies for other markets; (2) AMPI is not performing a service of marketwide benefit; (3) issues of equity require that a broader, regional view be considered and there is insufficient evidence in the record to address such issue; and (4) the issuance of transportation credits would, inequitably, depress returns to dairy farmers in other areas of the country.

With respect to the first major issue of opposition, it is clear that the Texas market carries reserve supplies of milk for the Texas Panhandle, Lubbock-Plainview, and Rio Grande Valley Federal order markets, where virtually all the milk producers are AMPI members. Consequently, some of the costs of maintaining the reserve supplies for these other markets are being borne by Texas order producers who are not members of AMPI. Opponents thus contend that the proposals should be denied for essentially the same reasons as set forth in the officially noticed 1987 decision. With respect to transportation credits, opponents quote the following from such decision: "Since reserve milk supplies are unevenly distributed among the seven orders, the producers in a market that carries more than its share of the reserve supply burden would be paying for balancing one or more other orders. At the same time, the producers in a market that carries less than its share of the reserve supplies would not pay their share of the necessary balancing costs."

The fact that the Texas market may carry some of the reserve supplies for other markets does not provide a basis for denying the implementation of transportation credits to handlers under the Texas order. There are a number of significant differences that distinguish the Texas situation from that described in the decision denying the issuance of such credits for the several southeastern markets. The primary differences are the geographical limitation of the proposal and the fact that the reserve milk

supplies for other markets are generally processed at El Paso, Texas, and do not displace Texas order producer milk at plants in the major production areas of northern Texas and southern Oklahoma. As previously indicated, the proposal for the Texas order would limit transportation credits to milk shipped out of the major northern Texas and southern Oklahoma production areas. The excess surplus milk pooled on the Texas market that is associated with the other markets is produced primarily in New Mexico and does not utilize the manufacturing capacity that is available in the heavy milk-producing areas of the Texas market. Such milk is essentially New Mexico milk that is pooled on the Texas market but diverted to AMPI's manufacturing plant at El Paso. The El Paso plant is pooled under the Rio Grande Valley order and the milk normally transferred or diverted to such plant would not be eligible for a transportation credit under the Texas order. Consequently, Texas order producers would incur a blend price reduction only for transportation costs that result from the hauling of milk produced in the major production areas that is in excess of local plant capacity. At the same time, producers supplying the Rio Grande Valley order would incur all of the transportation costs that would result if such milk would have to be shipped to distant outlets for surplus disposal. Consequently, the implementation of transportation credits under the Texas order is not directly linked to the surplus of other markets that is pooled under the Texas order.

Opponents of transportation credits are concerned that New Mexico production could be received and processed at AMPI's Texas balancing plants, with milk produced in the major Texas production areas then being shifted to nonpool plants outside Texas and qualifying for a transportation credit. The distances that such milk would have to be shipped would tend to limit such activity. However, additional provisions are included in the regulatory provisions to deal with these and other similar movements of milk to prevent Texas order producers from incurring a blend price reduction from unnecessary movements of milk to nonpool plants outside Texas.

On the second major point of opposition, opponents argue that AMPI is marketing its own surplus and, thus, is not performing a service of marketwide benefit that warrants compensation from producers under the Texas order. They also contend that AMPI is not bearing a disproportionate share of balancing costs since AMPI does not handle a disproportionate share of the market's Class III use if the amount of other order surplus milk is excluded from the Texas pool. They also contend that AMPI has been able to recover the cost of balancing the needs of distributing plants through its over-order pricing structure.

With respect to this latter point, AMPI has been able to recover at least some of the costs of balancing the needs of some distributing plants through its seasonal over-order pricing program. Under such plan, higher prices are charged to handlers who purchase less milk during the flush production months than was purchased during the previous fall months. However, such pricing plan has not been geared to the recovery of costs associated with marketing or hauling milk to distant outlets that is in excess of all the capacity available at plants in the marketing area. Instead, such over-order pricing is geared to recover costs associated with balancing the increased demand of fluid milk handlers for additional milk in the fall of each year.

Contrary to opponents' views, AMPI does perform a balancing function and carries a disproportionate share of the Class III use under the Texas order. The Texas order pools more than six times the amount of milk that is pooled under the Rio Grande Valley, Texas Panhandle and Lubbock-Plainview orders combined. Thus, only a relatively small amount of Class III use and producer milk would have to be removed from the Texas pool (10 to 13 million pounds per month) for the Texas market to reflect the four-market Class III use of 19 percent during 1987. Consequently, AMPI would still carry a disproportionate share of the Class III use under the Texas order and, as a result, would bear a disproportionate share of the cost of handling such milk. This supports a more equitable sharing of such costs among all producers on the market through the implementation of transportation credits, as authorized by the Act. In addition, even if there was not a substantial disproportionate sharing of Class III use among handlers, the Act provides the authority to implement transportation credits to handlers who provide a service to producers under marketing conditions where production exceeds all available nearby plant capacity.

With respect to the third major point of opposition to the implementation of transportation credits, opponents contend that regional equity considerations require the denial of the proposal since prior decisions establish a Department policy that a regional view must be taken in evaluating issues of equity among producers. Opponents cite the 1987 decision that denied the issuance of transportation credits for several southeastern markets and a 1983 decision concerning the denial of a proposed reduction to the Class III price (in the form of a credit to handlers) for certain months under the Texas order.

The distinctions between the 1987 decision and the present circumstances were set forth under the first major point of opposition to the implementation of transportation credits under the Texas order. With respect to the 1983 decision, AMPI claimed that it was experiencing losses in operating its two manufacturing plants because of the excessive quantities of milk that had to be processed during certain months of the year. Thus, the issue centered on the profitability or losses associated with operating two manufacturing plants that perform a balancing function for the market.

The proposal was denied for a number of reasons, including the uncertainties over the extent of the claimed losses and because substantial quantities of milk to which the credit would apply were diverted to other plants. There were no claimed manufacturing losses on such milk. Thus, it could not be concluded that the claimed losses at the two plants were a sufficient basis for determining the extent of manufacturing losses in handling the surplus milk associated with the Texas market.

The present case involves transportation costs incurred by handlers on milk that exceeds the capacity of plants in the market that must be hauled to distant outlets. There is no dispute over the costs that are incurred by AMPI, or any handler who hauls milk to distant outlets. The Act specifically authorizes the use of producer funds to compensate handlers for transportation expenses incurred in performing a market-clearing service.

The previous decision also indicated that it has been a longstanding policy that the costs of providing a balancing service should be recovered from the fluid milk handlers that benefit directly from the balancing function and that over-order prices were a mechanism for such recovery of costs. However, the Act has been amended since that decision was written to specifically provide that handlers may be reimbursed by producers for costs incurred in performing a number of services, including the cost of hauling milk to outlets for surplus disposal.

The last major point of opposition concerns the potential impact that

surplus Texas production could have on dairy farmers in other areas of the country. Opponents contend that it would be inequitable for such dairy farmers to bear the cost of disposing of Texas surplus production.

The basic impact of pool transportation credits under the Texas order will be on producers who supply the Texas market. This will be through a lowering of their returns from the sale of milk to partially compensate handlers for performing a marketing service of marketwide benefit. It is recognized, however, that surplus milk on the Texas market may result in a lowering of returns to dairy farmers in other areas as well. Surplus production in Texas, or anywhere in the country, places a downward pressure on all milk prices since such milk must be processed into manufactured dairy products that compete for sales in a national market. National supply/demand conditions that establish lower milk values would exist with or without the application of transportation credits to handlers in the Texas market or in other markets. Any resulting decline in the "Minnesota-Wisconsin price," which is an indicator of overall supply/demand conditions for milk in manufacturing uses, would have an impact on returns to all dairy farmers associated with Federal order markets, including those who supply the Texas market. As previously stated, returns to Texas producers would also reflect the credits provided to handlers.

The primary concern is that any transportation credits should not overcompensate handlers for hauling costs. To do so would represent a charge to Texas producers in excess of the value of the service and possibly create incentives for needless movements of milk to generate hauling profits. Consequently, the transportation credits established herein are intended to reimburse handlers only for a portion of the costs incurred so as to discourage any unnecessary movements of milk.

Transportation credits should be applicable only to milk that is produced in the major production areas of northern Texas and southern Oklahoma, as proposed by AMPI. This territory represents the primary production area for the Texas market. This northern milk supply is in excess of the fluid milk needs of the northern population centers and moves as needed to supply the fluid milk requirements of southern population centers located in deficit milk producing areas. When the northern milk supply is not needed for fluid use in either the northern or southern population centers, it is normally processed at manufacturing plants located in Zone 1 of the marketing area.

Zone 1, which contains the major Dallas-Ft. Worth population center, is the heaviest milk producing area. The zone includes eight distributing plants, one supply plant, the two pooled, balancing, manufacturing plants operated by AMPI and a number of nonpool plants at which pooled milk is processed into Class II products. Zone 3 (Waco) is south of Zone 1 and is the second largest milk producing area. It contains only one distributing plant. Milk production in this area is located between the major Zone 1 consumption center and other major consumption areas to the south in Zone 8 (Houston) and Zone 9 (San Antonio). Zone 1–A (Burkburnett) is the third largest milk producing area and is northwest of the population center in Zone 1. There is also only one distributing plant in Zone 1–A. Combined, these three zones represent about 75 percent of the milk produced in Texas that is pooled under the Texas order and more than 60 percent of all the milk pooled under the order. The three zones also include the top 10 milk producing counties in Texas, which represented 58 percent of the total Texas production and 62 percent of the Texas pooled milk during December 1987. These counties experienced more than a 20 percent increase in production from December 1986 to December 1987.

The amount of Oklahoma production pooled on the Texas market decreased from about 16 million pounds per month in 1986 to 15 million pounds per month in 1987. Of the 15 million pounds, about 9.4 million pounds, or 63 percent, was produced in the 19 southern Oklahoma counties located immediately to the north of Zones 1 and 1–A of the Texas marketing area. There is one nonpool plant in this area, located at Lawton, Oklahoma, and that plant is expected to be closed in the near future.

During 1986, AMPI delivered about 90 percent of the southern Oklahoma milk production to Texas pool plants in July, 35 percent in March and an average of 58 percent for the entire year. During 1987, AMPI delivered 79 percent of such milk to Texas pool plants in August, 20 percent in April and an average of 46 percent for the entire year. The remaining proportions were diverted to nonpool plants located outside Texas. As a result, it is apparent that the southern Oklahoma production is an integral part of the supply source for the Texas market and also would be the first milk to be moved to nonpool plants outside Texas when production exceeds local plant capacity. Such milk is moved on a direct-shipped basis from farms to plants in Zones 1 and 1–A of the marketing area or is diverted to nonpool plants outside Texas when it is not needed or when supplies of milk exceed the capacity of plants in Texas. As a result, transportation credits should be applicable to milk produced in southern Oklahoma as well as to milk produced in the three pricing zones of the Texas marketing area that also represent the primary production areas for the Texas market.

The pricing structure of the Texas market reflects the relationship between the production and consumption centers of the market. Zone 1 is the basing point at which Class I prices to handlers and blend prices to producers are announced under the order. Location adjustments are applied to the Zone 1 Class I and blend prices for other pricing zones in the marketing area and for locations outside the marketing area. The order provides for plus adjustments to the south of Zone 1 and minus adjustments to the north of Zone 1. For example, Class I and blend prices for Zone 3 are increased by 15 cents while such prices are reduced by 25 cents and 28 cents, respectively, for milk received at plants in Zone 1–A of the marketing area and the 19 southern Oklahoma counties. The increasing prices from north to south reflect the need for milk produced in the northern major production areas to move greater distances to supply the milk requirements of plants located in the southern deficit production areas of the market. Thus, location adjustments compensate producers for the greater value of the economic service producers provide to handlers in shipping milk greater distances to supply fluid milk needs. Conversely, when handlers incur greater transportation costs in marketing milk of producers that is in excess of plant capacity, they are providing a service of economic value to producers.

A transportation credit for handlers should be provided for surplus milk that is either transferred or diverted to nonpool plants outside Texas. In either case the credit should be computed at the rate of 2.4 cents per hundredweight per 10 miles for the distances that milk is hauled. Such rate represents 80 percent of the 3-cent per hundredweight hauling cost used to establish location adjustments in the Texas and other Federal order marketing areas to conform with Congressionally-mandated Class I differentials established May 1, 1986. Official notice is taken of the Assistant Secretary's final decision concerning the Texas and certain other marketing areas issued on October 30, 1986 and published November 5, 1986 (51 FR 40176). Such 2.4-cent rate also

represents a reasonable alignment of Class I differentials between Dallas and major cities in other Federal orders located in Arkansas, Oklahoma, Kansas, and Missouri.

The credit rate proposed by AMPI is based on actual hauling costs incurred in shipping milk to nonpool plants outside Texas. However, such rate is excessive in that actual hauling costs are not reflected in location adjustments under the Texas and other nearby orders. As indicated in the officially noticed 1986 decision, location adjustments reflect at most a conservative estimate of hauling costs to avoid hauling profits and to promote hauling efficiencies and encourage milk to move to the nearest alternative outlets. Such precautions for hauling milk for Class I use are even more necessary for hauling milk that is surplus to plant capacity. Incentives are necessary to promote the use of the nearest available outlets for surplus disposal to ensure that returns to producers are not reduced for shipments of milk over greater distances than necessary. Also, the use of such lower rate for transportation credits insures that the hauling incentive for surplus milk is less than what is provided for milk for fluid use.

The handlers' proposed rate is overly conservative and is based on various alignment rates between locations in the Texas marketing area. However, such rates reflected between certain cities disregard the fact that the location adjustments for the major consumption centers of the Texas market are based on a three-cent hauling rate for the additional distances between such consumption centers and the nearest major production area. For example, as set forth in the officially noticed 1986 decision, the plus location adjustment for Zone 9 (San Antonio) is 42 cents per hundredweight. Such adjustment is based on the additional distance that milk must move from Stephenville (Erath County) to San Antonio versus the distance between Stephenville and Ft. Worth. The additional distance of 140 miles at three cents per 10 miles establishes the 42-cent location adjustment. However, such adjustment reflects an alignment rate of considerably less than three cents between Dallas and San Antonio. Consequently, the various alignment rates that result between cities within the Texas marketing area do not necessarily reflect the hauling incentives provided under the Texas order for movements of milk from production areas to alternative consumption centers. In addition, such alignment rates within the Texas marketing area do not reflect the alignment of Class I differentials between Dallas and other Federal order markets to the north.

The transportation credits should apply to milk that is transferred or diverted to any nonpool plant located outside the State of Texas for Class II or Class III use. There was no testimony presented at the hearing or arguments presented in briefs to limit such credits to only Class III uses. In addition, there should be no limitation of credits to only northward movements of milk. Such a limitation would be inconsistent with the implementation of a low credit rate to encourage the use of the nearest available outlets for surplus disposal to minimize the impact of transportation credits on Texas order producers.

The transportation credit to handlers should apply to bulk fluid milk products transferred by handlers from pool plants located in Zone 1 of the marketing area to nonpool plants located outside Texas. The credit should apply to the total distance of the transfer.

The AMPI proposal would have applied a credit to milk that is transferred or diverted from farms of producers in Zones 1 and 3 for the distance in excess of 90 miles between Dallas and the nonpool plants receiving the milk. The basis for the mileage limitation is that producers on the average pay the cost of hauling milk for 90 miles to supply the fluid milk plants in Zone 1 of the marketing area. However, with respect to transfers of milk from pool plants, producers would pay the cost of hauling milk to the plant of first receipt. To the extent that milk is in excess of plant capacity, the transferor handler would incur the cost of hauling milk from the pool plant to the nonpool plant for surplus disposal. Thus, the handler transferring the milk should be reimbursed for the total distance between the pool plant and the nonpool plant for performing such marketing service for producers.

Since the use of Dallas as a basing point and the mileage limitation would not apply for establishing a transportation credit for transfers of milk, it is not necessary to include Zone 3 of the marketing area as an area from which a credit would apply to transfers of milk. Such zone is the southern-most area to which transportation credits would apply and there is only one pool distributing plant located in the area. Any transfer of milk to nonpool plants outside Texas would be expected to originate from the pool plants that are located in Zone 1 of the marketing area. Also, a transportation credit would not apply to transfers of milk from plants located in Zone 1-A of the marketing area or southern Oklahoma. There are no pool plants in southern Oklahoma and only one pool distributing plant in Zone 1-A and there was no proposal to provide credits on transfers of milk from such areas.

It is noted that the intent of the credit proposals is to limit such credits primarily to the major surplus production areas of the market. However, as pointed out at the hearing, milk that originates outside such production areas may be received at pool plants that subsequently transfer milk to nonpool plants outside Texas. Once such milk is commingled in a plant with milk that originated in the major production areas its identity is lost. Thus, any milk that is received at Zone 1 pool plants should be eligible for a transportation credit. However, as set forth later in this decision, the amount of milk eligible for a transportation credit would be reduced to the extent that milk is received from outside the State of Texas. Such offset, in conjunction with the restriction to Zone 1 plants for transportation credits on milk transfers, will tend to limit the application of such credits to milk produced inside the major production areas of the market.

Transportation credits should also be provided to handlers who move milk directly from the farms of producers to nonpool plants located outside the State of Texas. Handlers may divert producer milk from pool plants where the milk is normally received regardless of the location of the pool plant. However, only producer milk that is produced on dairy farms located in Zones 1, 1-A or 3 of the marketing area or in any of 19 specified southern Oklahoma counties would be eligible for a transportation credit. As previously stated, such areas represent the primary production areas that are relied upon to meet the fluid milk needs of the market. Also, milk in these northern production areas would be expected to be the first milk to be moved to nonpool plants outside Texas when production exceeds plant capacity.

The credit should be based on the distance that milk is hauled minus 100 miles. The 100-mile exclusion is basically intended to recognize an approximation of the average hauling distance to distributing plants that is paid for by producers.

AMPI proposed that milk delivered from Zones 1 and 3 should receive a transportation credit on the distance between Dallas and the nonpool plant minus 90 miles. On the other hand, handlers proposed that the credit distance should be based on the

distance between the nonpool plant and the nearer of Gainesville, Sherman, Paris or Mt. Pleasant, Texas, minus 100 miles. With respect to milk produced in Zone 1–A or southern Oklahoma, AMPI proposed that the credit be based on the distance between the nonpool plant and the nearer of Burkburnett, Texas or Sulphur, Oklahoma, minus 110 miles. The handler proposal for Zone 1–A would have used the Burkburnett basing point and the 100-mile exclusion.

It is obvious from data in the record that shipping distances to distributing plants vary significantly. For example, during May 1987, the weighted average distance of milk movements to distributing plants in Dallas was 83 miles, while the weighted average distance of shipments to Ft. Worth and Burkburnett were about 50 miles and 134 miles, respectively. Consequently, a precise distance that milk from the major production areas is shipped to distributing plants, for which the cost of the haul is paid by producers, is not ascertainable. However, it is necessary that some initial distance be excluded. Otherwise, handlers would receive a transportation credit for a hauling distance that is normally paid for by producers. A distance of 100 miles is an approximation of such distance for the four production areas to which a credit would apply. Also, such distance is in excess of the shipping distance observed in Zone 1 of the marketing area, which contains the greatest amount of production and where most of the distributing plants are located. A mileage in excess of the Zone 1 average shipping distance is consistent with the need to insure that handlers are not overcompensated for hauling costs incurred in clearing the market of surplus milk.

In order to insure that handlers are not overcompensated, the distance to which a credit applies should not be based exclusively on the basing points that were proposed by either AMPI or handlers. Rather, one basing point and various other locations should be used to determine the transportation distance for which a credit would apply. The credit should apply to milk that is diverted to a nonpool plant that is in excess of 100 miles from the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the load, or the courthouse of the county where the major portion of the milk on the load was produced. The use of these various locations to determine the distance to which a credit would apply will assure that handlers will not receive a credit for a greater distance than milk was hauled. Such procedure will carry out the objective of the handlers' proposal, but with a greater degree of precision than would be accomplished by the use of the northern basing points as handlers proposed.

In addition to a transportation credit for diverted milk, AMPI also proposed that such milk that originates in the primary production areas should no longer be priced at the location of the plant to which it is diverted if the milk is diverted to a nonpool plant located outside the State of Texas. Such change to the point of pricing on diverted milk was proposed for all months of the year by AMPI and for the flush production months by handlers.

As previously stated, the Texas order provides for both plus and minus location adjustments that reflect the value of the economic service provided by producers in shipping milk alternative distances from production areas to handlers' plants at various locations for fluid uses. Handlers pay for the value of the economic service provided by producers by the application of location adjustments to the Class I price. There are no location adjustments to handlers for milk in Class II or Class III uses since the basic principle is to cover the costs associated with hauling milk to distributing plants for fluid use. Also, there is no pricing incentive provided for hauling milk for manufacturing uses, which compete in a market that is more regional or national in scope than that for fluid milk, since it is more economical for milk to be processed into manufactured products at plants in production areas. Such concentrated products can be transported at a lesser cost than bulk fluid milk products.

Producers are compensated for the transportation service provided to fluid milk handlers by the application of the handler Class I location adjustments to the blend price. Consequently, the producer location adjustments apply to all milk delivered to a plant, regardless of its use, while handlers pay the location adjustment for milk in Class I use. The same location adjustment is applicable to the blend price since the hauling cost is the same for all milk delivered to a handler by a producer regardless of the ultimate use of the milk by the handler.

The concept of pricing diverted milk at the plant where it is received is based on the fact that milk that is in excess of fluid milk needs is normally processed at manufacturing plants that are located near or in the major production areas. Thus, producers whose milk is delivered to such plants normally incur a lesser hauling cost than if their milk is shipped further distances to supply fluid milk plants that are located near or in the major consumption areas of the market. Within the Texas market, the major balancing manufacturing plants, as well as distributing plants, are located in Zone 1 of the marketing area where no location adjustments apply. The distributing plants are located around the Dallas/Ft. Worth consumption centers while the manufacturing plants are located in the major production areas. When the milk supply exceeds fluid milk needs, it is processed at such manufacturing plants and the producers receive the Zone 1 blend price. Also, to the extent that milk in more northern areas (Zone 1–A and southern Oklahoma) where minus location adjustments apply is shipped to such plants in Zone 1, producers are compensated for the hauling costs incurred in shipping milk from the north to the south.

When there is an excessive supply of milk that cannot be processed at plants located within the marketing area, particularly in Zone 1 of the marketing area where the balancing plants are located, it must be processed at alternative outlets, principally nonpool plants that are located outside Texas. When milk is diverted to such distant plants, it is obvious that greater, rather than lesser, hauling costs are incurred. Thus, the underlying assumption that provides a basis for pricing milk at the location of the plant to which it is diverted is not applicable when supplies of milk exceed the capacity of those plants that are located in the primary production areas of the Texas market.

Regardless of the above, no change should be made to the point of pricing on diverted milk, as was proposed, to deal with this transportation problem. Such problem is primarily associated with additional costs incurred by handlers in diverting milk to distant, alternative outlets. Handlers who divert milk to a distant plant account to the pool at a Class II or Class III price, depending on the use of the milk, that is not adjusted for location. Under current provisions, handlers then receive a credit at the blend price payable to producers that is adjusted for the location of the plant to which the milk is diverted. Thus, when milk is diverted to a nonpool plant where a minus location adjustment applies, the handler credit is reduced by such location adjustment.

A reduction in the blend price credit to a handler results in establishing a penalty to a handler for diverting milk to a distant plant for surplus disposal. As a result, a transportation credit for a

handler should include an additional credit that is equal to the difference between the location adjustment that is applicable in the area where the milk is produced and any greater minus location adjustment that is applicable at the nonpool plant outside Texas where the milk is received.

The application of this additional credit on diverted milk basically carries out the intent of the AMPI proposal to change the point of pricing on diverted milk. As previously indicated, a number of parties opposed any such changes as being inconsistent with the location pricing criteria under the Act. They also contend that the point of pricing is not directly related to the authority to provide for credits to handlers for performing a service of marketwide benefit to producers.

Contrary to opponents' views, the problem associated with the cost of diverting surplus milk to distant outlets is a direct result of the excess milk production that is being produced by dairy farmers who supply the Texas market. Handlers who market and provide an outlet for such excess milk provide a service that benefits producers. Consequently, it is precisely the type of service for which the Act specifies that handlers may be compensated by producers. A failure to provide the additional credit on diverted milk would result in penalizing a handler for a cost that is incurred in clearing the market of excess supplies of milk.

Furthermore, the additional transportation credit would not distort the location value of milk or result in non-uniform costs to handlers. As previously stated, there are no location adjustments to handlers for milk in Class II or Class III uses. Consequently, there would be no change in the class price value of milk to handlers as a result of the credit to remove the penalty on handlers that results from blend price location adjustments under marketing conditions that exist when supplies of milk exceed plant capacity. In addition, the application of the additional credit will promote the use of the most efficient and economical marketing practices available to dispose of surplus milk. Most of the milk that is surplus to the needs of the Texas market is diverted to nonpool plants while limited quantities are transferred from pool plants to nonpool plants. It is often more efficient to move milk from farms in certain areas directly to nonpool plants rather than for such milk to be hauled to pool plants, be unloaded and then reloaded for transfer to a nonpool plant. In the absence of the additional diversion credit, a pricing incentive would be provided to handlers to engage in such uneconomic transferring practices to qualify for a transportation credit. Consequently, the application of the additional credit on diverted milk will allow handlers the flexibility to use the most efficient method of disposing of surplus milk.

A brief in opposition to the proposed pricing point change argued that such a change would amount to the compensation of producers based upon their location. Consequently, the brief argues that the proposal would amount to a "nearby" differential that was invalidated in the case of *Zuber vs. Allen* (396 U.S. 168, 1969).

Contrary to the arguments presented in the brief, the issue of a transportation credit for surplus milk (which is now specifically authorized by the Act) is totally different from the differential invalidated by *Zuber*. In *Zuber*, the nearby differential was a payment to dairy farmers who were located in certain areas. The court concluded that the location of farms was not a basis for higher returns since location alone does not establish that producers provided a service of economic value to handlers. The present circumstance concerns a credit from the pool to handlers for providing a service of economic value to producers. Furthermore, the credit from the pool (which lowers returns to producers) does not change the value of milk to handlers at class prices at any location. The credit is necessary so that the handler who diverts the milk is not penalized by blend price location adjustments for providing a service of value for producers, namely, clearing the market of excess milk supplies.

The additional credit on diverted milk should be applicable only during the months of March–June and December. It is during these months, when supplies of milk exceed plant capacity, that handlers provide an economic service of value to producers, for which handlers should be compensated.

Milk is diverted to nonpool plants outside Texas during most months of the year by AMPI, even during those periods when there is obviously capacity available to process additional supplies of milk at the Muenster and Sulphur Springs balancing plants. Consequently, the decision to divert milk to distant plants when there is capacity at plants in the marketing area is a business decision by AMPI. Such movements of milk are not related to the movements of milk to nonpool plants outside Texas that are necessitated by a lack of plant capacity in the marketing area to handle the amount of production available during the flush production months of the year. Consequently, it would be inappropriate to reduce returns to Texas producers to compensate handlers for such movements of milk.

The implementation of the transportation credits to handlers could provide a pricing incentive for inefficient and unnecessary movements of milk. As previously stated, milk that is produced in New Mexico is currently associated with the Texas market, although such milk does not currently displace significant quantities of milk that is produced in the major production area of the Texas market from the plant capacity that is available in the Texas marketing area. However, the existence of a transportation credit under the Texas order would create an economic incentive for such milk to be received at plants in the marketing area, thereby displacing Texas milk that could be hauled to alternative outlets with a transportation credit. Although hauling distances would tend to discourage such movements, the transportation credit would provide some additional incentive for such movements.

With respect to milk produced in other areas transportation credits would provide a significant incentive for uneconomic movements of milk. For example, there is currently an incentive for milk produced in southern Oklahoma to be received at plants in the Texas marketing area because current location adjustments increase the value of milk from north to south to encourage movements of milk to the south. Thus, a portion of the cost of hauling milk southward is currently covered under the order pricing structure. Such pricing, coupled with a transportation credit to move milk to plants outside Texas, would encourage southern Oklahoma milk to be received at plants in the marketing area and encourage Texas milk to be shipped to plants outside the State. Such movements of milk would not be representative of an efficient and economical marketing system since the most northern located milk would be the first milk that would be expected to be moved to nonpool plants outside Texas when plant capacity in the Texas marketing area is inadequate. Texas order producers should not be required to reimburse handlers for such uneconomic movements of milk.

In order to prevent Texas order producers from bearing unnecessary hauling costs, the amount of milk to which a transportation credit would apply should be reduced by the amount of milk from outside the State of Texas that a handler, or any affiliate of the

handler, causes to be received at plants in the Texas marketing area. An affiliate of a handler would include a multi-plant handler or cooperative associations operating under a joint marketing agreement. To the extent that milk is received at plants from outside Texas, the lowest possible transportation credit shall be assigned to a handler for any remaining volume of milk shipped to nonpool plants outside Texas. This is accomplished by assigning the offset pounds of milk (the volume of milk received from outside Texas) in sequence beginning with the nonpool plant at which the greatest credit would apply. In addition, no transportation credit should apply to milk shipped to any given nonpool plant during the month if any of such milk is assigned to Class I use. Texas producers should not be required to reimburse handlers for costs incurred in shipping milk to other plants outside Texas for Class I use.

With the implementation of the offset provisions to assure that producers do not reimburse handlers for inefficient movements of milk, it is also necessary to limit transportation credits to handlers for only the last half of December as proposed by handlers. As indicated, the historical supply/demand situation during December is somewhat different than the situation that exists during March–June. To the extent that supplies are in excess of plant capacity during the latter part of the month, shipments of milk to nonpool plants outside Texas during the latter part of the month should not be offset to the extent that milk may be imported from outside Texas during the beginning of the month to meet additional fluid milk needs. By limiting the application of transportation credits to only the December 16–31 period, handlers would not be penalized for market-clearing activities during such period because of the need to obtain additional milk supplies during the first part of the month.

A number of parties raised concerns over the extent to which transportation credits for the Texas market could lead to abuses. In particular, they contended that if transportation credits are implemented, safeguards should be provided to assure that Texas order producers do not bear the cost of transporting surplus milk associated with other markets, that credits do not overcompensate handlers, thus encouraging excessive hauling of milk, and that assurances be provided that milk is first made available to fluid milk plants. The provisions contained herein are designed to specifically minimize any adverse impact of transportation credits on Texas producers, as well as other order producers and fluid milk handlers. The safeguards include a credit rate below transportation costs, a substantial distance that milk must be diverted before a credit applies, and the offset to the amount of milk to which a credit would apply. In addition, the nonpool plants outside Texas that receive milk subject to a credit and the total value of credits will be made available on a monthly basis by the market administrator. Such market information will provide a basis for the continued monitoring of the effectiveness and impact of these provisions by the industry. Other potential safeguards, such as a maximum shipping distance or a notification process to identify the nearest available nonpool plants or the fluid milk needs of distributing plants, do not appear to be necessary. To the extent that additional modifications may be necessary, the amendatory process is available to refine, or eliminate, order provisions as the need may arise through experience with the issue of transportation credits.

2. *The need for emergency action with respect to issue no. 1.* The hearing notice indicated that evidence would be taken at the hearing to determine whether emergency marketing conditions exist to such an extent that omission of a recommended decision and the opportunity to file exceptions thereto under the rules of practice and procedure is warranted. There was a consensus among the hearing participants that the disposal of surplus milk would be a problem for Texas regulated handlers this spring. In anticipation of these marketing conditions, AMPI testified that the amandments emanating from the February hearing should be adopted as expeditiously as possible.

The implementation of the proposed amendments on an emergency basis was opposed by handlers. They testified that it would be inappropriate to issue any transportation credits without providing the industry with the opportunity to fully review and analyze the decision and any amendments resulting from the hearing. They indicated that there is little experience with transportation credits and that it is a highly complex and important issue that is of interest throughout the Federal order system.

The evidence in the record of this proceeding strongly indicates that surplus milk supplies in the Texas market will be substantially larger than normal during the months of March–June this year. It also shows that the capacity of Texas manufacturing plants will not be adequate to process all of the market's excess milk. In addition to the emergency marketing conditions, the Act authorizing transportation credits requires that any amendments resulting from the hearing be implemented not later than 120 days after a hearing is conducted on such issue. The transcript of the proceeding was certified on March 15, 1988, which requires the implementation of amendments by July 13, 1988.

The complexity of the issue and the considerations involved require the issuance of a tentative decision to make it possible to issue an interim rule to implement the proposed provisions within the statutory deadline. This procedure will also give interested parties the opportunity to comment fully, through exceptions, on the decision and proposed amendments.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Texas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient

quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Tentative Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof are two documents, a Tentative Marketing Agreement regulating the handling of milk, and an Interim Order Amending the Order regulating the handling of milk in the Texas marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

April 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Texas marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on: June 6, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Interim Order Amending the Order Regulating the Handling of Milk in the Texas Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon whih a hearing has been held.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 1126.55 is added to read as follows:

§ 1126.55 Credits to handlers for transporting surplus milk.

For each of the months of March through June and December 16–31, a transportation credit shall be computed for each handler on the amount of producer milk that is classified as Class II or Class III pursuant to § 1126.42 (b)(3) or (d)(2) that such handler transfers or diverts to nonpool plants located outside the State of Texas. Credits established pursuant to paragraphs (a) and (b) of this section shall be computed at the rate of 2.4 cents per hundredweight for each 10 miles, or fraction thereof, for the shortest hard-surfaced highway distance, as determined by the market administrator. The amount of milk eligible for a transportation credit and the amount of such credit shall be established in accordance with paragraphs (a), (b), and (c) of this section subject to the limitations specified in paragraph (d) of this section.

(a) A transfer credit shall apply to bulk fluid milk products transferred by a handler from a pool plant located in Zone 1 of the marketing area for the distance between the transferor pool plant and the transferee nonpool plant.

(b) A credit for diverted milk shall apply to milk produced in Zone 1, 1–A, or 3 of the marketing area or the Oklahoma counties of Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, or Tillman that is diverted to a nonpool plant for the distance in excess of 100 miles between the nonpool plant and the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the route, or the courthouse of the county where the major portion of the milk on the load was produced.

(c) A credit for diverted milk produced in the area specified in paragraph (b) of this section shall also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustment) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received.

(d) No credit shall apply to the total quantity of milk moved to a given nonpool plant by a handler during each of the credit periods if any portion of the milk is assigned to Class I. Also, the amount of milk to which a credit would be applicable during each of the credit periods pursuant to paragraphs (a), (b), and (c) of this section shall be offset by the amount of milk that a handler or any affiliate of the handler causes to be received at plants located in the marketing area from outside the State of Texas during each of the credit periods, with such offset to be applied in sequence beginning with the nonpool

plant at which the greatest credit would apply

3. In § 1126.60, paragraph (h) is revised to read as follows:

§ 1126.60 Handler's value for computing uniform price.

* * * * *

(h) Deduct any credit applicable pursuant to § 1126.55.

Tentative Marketing Agreement Regulating the Handling of Milk in the Texas Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this tentative marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this tentative marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1126.1 to 1126.86, all inclusive, of the order regulating the handling of milk in the Texas marketing area 7 CFR Part 1126 which is annexed hereto; and

II. The following provisions:

Section 1126.87 Record of milk handled and authorization to correct typographical errors.

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of April 1988 hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Section 1126.88 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

BY _____

(Name) (Title)

(Address)

(Seal)

Attest _____

Date _____

[FR Doc. 88-13162 Filed 6-10-88; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

Certificate of Competency (COC) Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The proposed regulation is a complete revision of the Small Business Administration (SBA) COC Regulations, adding eligibility and appeals criteria as well as clarifying other administrative provisions. This action is necessary to reflect a number of changes in procurement laws that have occurred since the last revisions to the current COC regulations. This proposed regulation will provide small business concerns and contracting agencies with definitive guidelines for COC program eligibility and appeals of affirmative recommendations to issue a COC made by our Regional Offices.

DATES: Written comments must be submitted on or before August 12, 1988.

FOR FURTHER INFORMATION CONTACT: John Whitmore, Director, Office of Industrial Assistance, Office of Procurement Assistance, Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Telephone No. (202) 653-7035.

SUPPLEMENTARY INFORMATION: Proposed § 125.5(a), the "eligibility" section has been revised for greater clarity. Proposed § 125.5(a) incorporates the provisions currently found at § 125.5 (a) and (c), without making any substantive changes, and adds new provisions to reflect the effect of recent amendments to Section 15 of the Small Business Act, 15 U.S.C. 644.

Under the first new provision, § 125.5(a)(5), a small business concern, to be eligible for a COC, would be required to perform with its own facilities and personnel the portion of the contract now required by section 15 of the Small Business Act, as amended by section 921(c)(2) of the Defense Reauthorization Act of 1987, Pub. L. 99-661 (100 Stat. 3816). 15 U.S.C. 644(o).

Under the second new provision, § 125.5(a)(6), to be eligible for a COC a small business concern would be precluded from performing or subcontracting a significant portion of the contract outside the United States, its trust territories, possessions or the Commonwealth of Puerto Rico. This condition is imposed due to the Agency's determination that (1) award of the contract to a small business concern which would not perform or subcontract the majority of its contract in the United States would not further the purposes of the Small Business Act, and (2) under such circumstances, it would be impossible for the Agency to effectively and accurately evaluate the responsibility of the business to perform or assure performance of its subcontractor in such foreign locations.

Procedural provisions currently found at § 125.5(d)-(g) would be revised and consolidated at § 125.5(b). While the substance of all current provisions would be retained, other changes to the regulations would be made to incorporate new provisions that incorporate language currently found at Subpart 9.4 of the Federal Acquisition Regulation (FAR) (Debarment, Suspension and Ineligibility), and that give effect to the "Guidelines for Nonprocurement Debarment and Suspension" issued by the Office of Management and Budget, 52 FR 20360 (May 29, 1987), and to delineate what has been and is current practice in administering the COC program.

Paragraph § 125.5(b)(4)(i) would give effect to debarments and suspensions under Subpart 9.4 of the FAR, 48 CFR Subpart 9.4. Under that paragraph, if a small business concern, or any of its principals, is on the debarred or suspended bidders list (published monthly pursuant to Office of Federal Procurement Policy Letter 82-1, dated June 24, 1982), it would be presumptively deemed non-responsible by SBA for purposes of issuance of a Certificate of Competency.

Under paragraph § 125.5(b)(4)(ii), the Agency would presume a firm to be non-responsible in two cases. First, if the small business concern or any of its principals has either been convicted of offenses and their case is still under the jurisdiction of a court or suffered a civil judgment within the past three years which would be grounds for debarment or suspension, the Agency would presume that the concern is non-responsible for lack of integrity. Convictions or civil judgments older than three years would be considered as evidence relevant to responsibility on a case-by-case basis, but would not give rise to the presumption. Also, a concern that is six months, or more, delinquent on a debt to the Federal Government would be presumed non-responsible for

lack of financial capacity. This would recognize the thrust of the non-procurement Debarment and Suspension Guidelines and their underlying Executive Order, E.O. 12549, to exclude from participation in its programs individuals and entities who do not satisfy their financial obligation to the Federal Government.

Paragraph § 125.5(b)(4) affirms that the COC procedure is not necessarily limited to a consideration of the deficiencies found by the contracting officer.

Paragraph § 125.5(b)(5)(i) makes clear that SBA's Regional Offices have the authority to deny a COC regardless of the dollar value of the contract involved. It also makes clear that the decision to deny a COC at the Regional Office level is the final Agency decision and that there is no administrative appeal of that decision within SBA.

The proposed regulation would also include for the first time procedures for appeals by contracting agencies of initial Regional Office determinations to issue a COC. Appeal procedures are currently described in Part 19 of the FAR (48 CFR Subpart 19.6). The proposed provisions would be included in § 125.5(b)(5)(ii)(B). Under these proposed provisions, a contracting agency may appeal an SBA Regional Office's decision to issue a COC. The intent of the appeal procedure would be to allow a Department or Agency the opportunity to provide new and additional information or to point out specific errors in interpretation. Contract actions processed utilizing small purchase procedures and COCs issued by the Associate Administrator for Procurement Assistance in the first instance would not be subject to the COC appeal process.

Paragraph 125.5(b)(7) of the proposed regulation is also new. It identifies two circumstances where SBA would reserve the right to reconsider its determination to issue a COC. SBA may seek the opportunity to reconsider its determination where (1) it acquires or develops new and material adverse information regarding the responsibility of a small business concern after the COC was issued but before any contract had been awarded in reliance upon such COC, and (2) where the contracting agency had not awarded the contract within 60 days of issuance of the COC. In the first case, SBA believes it is its duty to reconsider a COC if, prior to award, it has evidence that the company is not responsible, notwithstanding its original determination. In the second case, SBA is concerned that its COC would become stale due to the changed circumstances of the small business concern. In cases where this may be of concern, SBA wishes to retain the right to reconsider its decision to issue a COC to assure itself and the procuring agency that the company remains responsible. This provision does not grant the right to a small business concern denied a COC to request reconsideration of that decision.

Section 125.5(c) would incorporate the provisions currently found at § 125.5(i), relating to determinations under 41 U.S.C. 35(a) (the Walsh-Healey Public Contracts Act). The provision would be amended to incorporate by reference the processing procedures now found in section 50-201.101(b) of Title 41, Code of Federal Regulations, as promulgated by the Department of Labor, regarding contracting officer initiated and protest initiated (both before and after award) Walsh-Healey eligibility determinations.

Section 125.5(d) would incorporate the provision currently found at § 125.5(j). This provision implements the language found at section 8(b)(7)(c) of the Small Business Act, 15 U.S.C. 637(b)(7)(C), which requires procuring agencies and their contracting officers to let contracts to those companies to which SBA has issued a COC without requiring them to satisfy any other requirement with respect to responsibility or Walsh-Healey eligibility.

SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. SBA does not anticipate that a substantial number of small businesses will be ineligible for a COC under these amended regulations, if adopted in final form. Moreover, this regulation is not a major rule for purposes of Executive Order 12291 because it is procedural in nature and it not likely in and of itself, to result in annual economic effect of $100 million or more, major increase in costs or a significant adverse effect on any segment of the economy.

Finally, the regulation imposes no recordkeeping requirements and no new reporting requirements subject to the Paperwork Reduction Act 44 U.S.C. 35.

List of Subjects in 13 CFR Part 125

Certificate of competency, Government contracts, Government procurement, Small business, Procurement assistance.

Accordingly, it is proposed that Part 125 of 13 CFR be amended as follows:

PART 125—[AMENDED]

1. The authority citation for Part 125 be revised to read as follows:

Authority: Section 5(b)(6), 8 and 15 of the Small Business Act, 15 U.S.C. 634(b)(6), 637, and 644.

2. Section 125.5 is revised as follows:

* * * * *

Office of Procurement and Technical Assistance

§ 125.5 Certificate of competency program.

The Certificate of Competency (COC) Program is authorized under section 8(b)(7) of the Small Business Act, as amended. A COC is a written instrument issued by SBA to a Government contracting officer, certifying that a small business concern (or a group of such concerns) named therein possesses the responsibility and/or Walsh-Healey eligibility to perform a specific Government procurement (or sale) contract.

(a) *COC Eligibility.* To be eligible for the COC program, a firm must meet the following criteria:

(1) It must qualify as a "small business concern" under the applicable size standard for the SIC Code contained in the solicitation as of the date of its self-certification, submitted as part of the concern's offer; or be a "group of such concerns" in the form of a small business Defense Production Pool approved under the Small Business Act; see § 125.7 of this title.

(2) If it is a non-manufacturing small concern which submits an offer on a small business set-aside contract for supplies, it must furnish end items under the contract which have been manufactured by a small business concern in the United States or its trust territories, possessions, and the Commonwealth of Puerto Rico. The responsibility of the small non-manufacturer is certified, not the manufacturer.

(3) If it is a non-manufacturing small concern which submits a bid or offer on an unrestricted procurement utilizing small purchase procedures, it must furnish end items manufactured in the United States or its trust territories, possessions, and the Commonwealth of Puerto Rico. The responsibility of the small non-manufacturer is certified, not the manufacturer. In the event of a tie bid, preference for award shall be given to the concern applying end items produced by a small business concern.

(4) If the concern will provide a kit of supplies or other goods, provided for a special purpose, on a small business set-aside contract, the concern is eligible if it meets the size standard for the SIC Code of the product acquired and more than 50% of the total value of the

contents of the kit was manufactured by concerns which would also qualify as small businesses under the size standard applicable to the procurement. The offeror need not itself by the manufacturer of any of the components of the kit; however, each end item comprising the kit must be produced or manufactured in the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico. On an unrestricted contract for kits, paragraph (a)(3) of this section would apply.

(5) If the solicitation involved is for supplies, services, or construction, the firm must perform with its own facilitites and personnel the portion of the contract required by the Small Business Act, as amended, (*See* 15 U.S.C. 644) or required by Part 121 of these regulations to be eligible for contract award, or, notwithstanding the absence of any other requirement, the firm must perform at least a significant portion of the contract with its own facilities and personnel.

(6) If the solicitation is for supplies, services, or construction, the firm must perform a significant portion of the contract in the United States of its trust territories, possessions, and the Commonwealth of Puerto Rico.

(b) *Procedures.* (1) Government procurement officers and officers engaged in the sale and disposal of Federal property, upon determining and documenting that a small business concern lacks certain elements of responsibility, including but not limited to competency, capability, capacity, credit, integrity, perseverance and tenacity, shall notify the SBA Regional Office in the geographic area where the principal office of the concern is located of such determination in writing. The referral from the contracting agency shall include 3 copies of the solicitation, an abstract of bids, the pre-award survey, the contracting officer's determination of non-responsibility, and any other justification for the non-responsibility determination.

(2) Award will be withheld by the contracting officer for a period of at least 15 working days (or a longer period if agreed to by the SBA and the contracting agency) following the date of receipt by SBA's Regional Office of the contracting officer's referral (including the materials specified above), in order to permit SBA to investigate and issue a decision as to the bidder's responsibility.

(3) Upon receipt of the contracting officer's referral, the SBA Regional Office will contact the small business concern to inform it of the determination and to offer the concern the opportunity to appeal the determination by applying to SBA for a COC. Upon receipt of the required application and documentation, by the date specified by the Regional Office, SBA personnel may be sent to the applicant's facility to review its responsibility and to make recommendations to the Regional official with authority to approve or deny the application. If the requested application and/or information is not submitted by the date specified by the Regional Office, the case will be dismissed.

(4) The COC procedure is not limited to a consideration of the deficiencies found by the contracting officer. Since SBA makes its own independent evaluation of the elements of responsibility, it may deny a COC for reasons other than those supplied by the contracting officer. In reaching its decision to issue or deny a COC, SBA will use the following presumptions:

(i) A small business concern will be presumed to be non-responsible if the concern, or any of its principals, is on a debarred or suspended bidders list.

(ii) A small business concern will be presumed non-responsible, unless it can rebut the presumption with information deemed sufficient by SBA, if either of the following circumstances exist:

(A) Within the past three years, the concern, or any of its principals, has been convicted of an offense or offenses and the matter is still under the jurisdiction of a court, e.g., the concern or its principals are on probation, serving a suspended sentence, etc., or a civil judgment has been entered against any of the same for any offense that would constitute grounds for debarment or suspension.

(B) The concern is six months or more delinquent on a debt to the Federal Government.

(5) Following review of the information submitted by the applicant small business concern and the information gathered by SBA personnel, the Regional Office will issue its decision on the application for the COC.

(i) If the Regional official's decision is negative, the COC is denied and both the applicant and contracting agency are so notified. The Regional Office may deny a COC, regardless of the dollar value of the contract involved. The Regional Office's decision to deny a COC is the final Agency decision; there is no administrative appeal of that decision.

(ii) If the Regional official's decision is affirmative and the dollar value of the procurement is within the Regional Office's delegated authority, as shown at 13 CFR 101.3–2, the Regional Office will notify the contracting officer of the Regional Office's intention to issue a COC. Following notification from the Regional Office of its intention to issue a COC, if the contracting agency disagrees with the Regional Office's conclusion that the applicant is responsible to perform, the contracting officer and the Regional Office shall make every effort to resolve differences before SBA takes final action on a COC.

(A) Where the contract involved is a small purchase action, following completion of such discussions, or if no disagreement is raised by the contracting agency, the Regional Office will issue the COC. The decision of a Regional Office to issue a COC for a small purchase action constitutes the final SBA decision in such cases.

(B) In the case of contracts other than small purchases, the Regional Office will issue the COC unless the contracting officer requests a formal review by the SBA Central Office.

(*1*) Requests for such appeals shall be filed with the Regional Office processing the COC application. The Regional Office shall accept the appeal, contingent upon a contracting agency agreement to withhold award until the formal appeal process is concluded. Without an agreement from the contracting agency, the Regional Office shall issue the COC. Upon agreement, the Regional Office shall immediately forward the case file to Central Office.

(*2*) The intent of the appeal procedure is to allow contracting agencies the opportunity to submit documentation not previously available to the contracting agency to the SBA or to point out errors in interpretation.

(*3*) The SBA Central Office, upon receipt, of the case file, shall inform the Director, OSDBU at the secretariat level, with a copy to the contracting officer, that the case file has been received and notify the contracting agency that a formal appeal decision may be requested by the Director, OSDBU. If the contracting agency seeks such a decision, it shall so notify the SBA Central Office within 10 working days (or a time period acceptable to both agencies) through the Director, OSDBU of its receipt of the notice under this paragraph (b)(5)(ii)(B)(*3*). Any materials or argument in support of the appeal must be filed within 10 working days (or a period of time agreed upon by both agencies) after SBA receives the request for a formal appeal. The SBA Associate Administrator for Procurement Assistance will make a final determination in writing, and issue or decline to issue the COC.

(iii) For procurements in excess of the Regional Office's delegated authority to approve a COC, the Regional Office

shall refer its recommendation for issuance of the COC to the Associate Administrator for Procurement Assistance, SBA Central Office. The Associate Administrator will cause a review to be made and will either issue or deny the COC. If the Associate Administrator's decision is negative, the applicant and contracting agency are so informed; if it is affirmative, a letter, certifying the responsibility of the firm (the COC) is sent to the contracting agency and the applicant is informed of such issuance by the Regional Office. Except as set forth in paragraph (b)(7) of this section, there shall be no appeal from or reconsideration of the Associate Administrator's decision.

(6) The notification to an unsuccessful applicant following either a Regional Office or Central Office denial will briefly state the reason(s) for denial and inform the applicant that a meeting may be requested with the appropriate SBA regional personnel to discuss the reasons for denial. Upon receipt of a request for such a meeting, the appropriate regional personnel will confer with the applicant and explain fully the reasons for SBA's action. Such a meeting does not constitute an opportunity to reargue the merits of the Agency's decision to deny the COC. Such meeting will be for the sole purpose of enabling the applicant to improve or correct deficiencies in future cases.

(7) The decision to issue a COC may be reconsidered, at the discretion of SBA, in the following circumstances:

(i) If SBA discovers after issuance of a COC, but before award of any contract, in reliance upon such COC, that the COC applicant submitted material false information or omitted material adverse information relating to the current responsibility of the applicant concern, SBA, in its sole discretion, may request that the contracting agency return the matter for reevaluation of the original decision for purposes of reaffirming or withdrawing the COC.

(ii) If the contract for which a COC has been issued has not been awarded within 60 days, SBA may request that the contracting agency provide the reason for the delay. SBA shall determine from the contracting officer whether the contract will be awarded. If the contracting officer advises that an award is intended to be made, SBA may request that it be allowed to reevaluate its earlier decision for purposes of reaffirming or withdrawing the COC.

(c) *Walsh-Healey Referrals.* A contracting officer, after conducting their own review and documenting that a small business concern is not eligible for award due to the provisions of section 35(a) of Title 41, U.S. Code (the Walsh-Healey Public Contracts Act), must notify SBA of such determination. SBA shall either certify that the concern is eligible under Walsh-Healey for the specific contract or concur with the finding of ineligibility and refer the matter to the Secretary of Labor for final disposition.

(1) The contracting officer must comply with § 50–201.101(b)(4) of Title 41, Code of Federal Regulations (41 CFR 50–201.101(b)(4) in making a determination of ineligibility before referring the matter to SBA.

(2) In the event of either a third party protest or a protest received after contract award, but before final completion of the contract, the contracting officer shall follow the procedures in §§ 50–201.101(b)(5) or 50–201.101(b)(7) of Title 41, Code of Federal Regulations (41 CFR 50–201.101(b)(5) or 50–201.101(b)(7)), as appropriate, in making a Walsh-Healey determination.

(d) By the terms of the Small Business Act, as amended, 15 U.S.C. 631 *et seq.*, the COC is conclusive as to responsibility. Where SBA issues a COC to a small business with respect to a particular contract, contracting officers are directed to award the contract without requiring the firm to meet any other requirement with respect to responsibility and Walsh-Healey eligibility.

Date: April 6, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–13277 Filed 6–10–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–65–AD]

Airworthiness Directives; Fokker Model F–28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Fokker Model F–28 series airplanes, which would require supplemental structural inspections, and repair or replacement, as necessary, to assure continued airworthiness. Some Fokker Model F–18 series ariplanes are approaching or, in some cases, have exceeded the manufacturer's original design goal. This proposal is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. Fatigue cracks in these areas, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATES: Comments must be received no later than August 8, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–65–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314.

This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 E. Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-65-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidents of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed this goal. In order to evaluate the impact of increased fatigue cracking with respect to maintaining the safe design of the Fokker Model F-28 airplane structure, the manufacturer has conducted a structural reassessment of these airplanes using engineering evaluation techniques. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91-60, "Continued Airworthiness of Older Airplanes."

In response to AC-91-60, Fokker initiated the development of a Structural Integrity Program (SIP) for the Model F-28 airplanes, and coordinated their efforts with the operators of Model F-28 airplanes. To make maximum use of service experience and existing maintenance programs, Model F-28 operators have participated with the manufacturer and the FAA in generating the Model F-28 SIP. Advisory Circular 91-60 promotes the preparation and approval of a criteria document for such a program. Fokker developed criteria and guidelines for: (a) Selecting the major areas of the structure, identified as significant structural items (SSI), which are candidates for supplemental inspection by using the lastest engineering analysis techniques; and (b) analyzing existing inspection programs. This Structural Integrity Program is a supplement to the current normal maintenance inspection program to detect fatigue damage, and provides detailed non-destructive inspection (NDI) procedures to supplement the operators' existing inspection programs, as necessary. The program was established on evaluation of full scale and/or detailed tests and/or calculations and/or service experience. The document's purpose is to maintain the structural integrity of the Model F-28. It specifies the requirements for known and anticipated defects associated with fatigue, corrosion, stress corrosion, accidental damage, or manufacturing defects.

The F-28 Structural Integrity Program (SIP) Part I Document No. 28438 provides information addressing retirement lives, stress corrosion, and fatigue inspections. Part II Document No. 28441 provides instructions for the "high time inspections."

The SIP inspection program is based on Model F-28 current usage, durability assessment of the structure using current analysis techniques, and selection of the current (NDI) methods. In order to implement the SIP inspection program, each operator must compare its current structural maintenance program to the SIP requirements. If the current inspections equal or exceed the SIP requirements, no supplemental inspections would be required for that area under the SIP program. However, if the opposite is true, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary in addition to the operator's normal maintenance program.

Since the emphasis of the SIP program is on aging aircraft, the inspection program emphasis is on the high time aircraft population. The date and flight hours (or landings) at which modification or replacement is made, would be required to be reported by the operator to the manufacturer for each applicable airplane by fuselage number and/or factory serial number. That particular configuration is then evaluated by Fokker. The inspection threshold and interval will be established, and changes, if needed, would be published in the next revision of the SIP.

Inspection program

The expected fatigue life of each significant structural item (SSI) is determined by a demonstrated life, either by service experience or by analysis. The time when the supplemental inspections are to begin or be completed is determined from the expected fatigue life and crack propagation characteristics of each SSI. All inspections are to be accomplished before the airplane exceeds the fatigue life threshold.

The results of the supplemental inspections are to be reported to the manufacturer in accordance with the SIP. This information will be presented in the periodic revisions.

Effects on Existing Maintenance Programs

In developing the SIP, the manufacturer and operators reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SIP program. As a result, the Fokker F-28 SIP allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their airplanes.

This airplane model is manufactured in The Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, and AD is proposed that would require supplemental structural inspections and repair or replacement, as necessary, in accordance with the SIP described above.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control number 2120-0056.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD. Implementation of the SIP in an operator's maintenance program is estimated to require 430 manhours per airplane, at an average labor cost of $40 per manhour ($17,200 per airplane). The annual recurring actions are estimated to require an average of 430 manhours per airplane, at an average labor cost of $40 per manhour ($17,200 per airplane). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $877,200 the first year, and $877,200 annually threafter.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria for the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial

number of small entities because few, if any, Model F-28 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to all Model F-28 series airplanes, certificated in any category. Compliance required as indicated in the body of the AD, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection of the Significant Structural Items defined in Fokker Structural Integrity Program, Part I Document No. 28438, dated March 1, 1982, and Revision 6, dated March 20, 1986 and Part II Document 28441, dated February 20, 1984. The non-destructive inspection techniques set forth in the SIP provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to Fokker, in accordance with the instructions of the SIP.

B. Cracked structure detected during the inspection required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in the SIP.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

The FAA will request Federal Register approval to incorporate by reference the manufacturer's service documents identified and described in this proposed directive.

Issued in Seattle, Washington, on June 6, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-13178 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 88-NM-64-AD]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Fokker Model F-27 series airplanes, which would require supplemental structural inspections, and repair or replacement, as necessary, to assure continued airworthiness. Some Fokker Model F-27 series airplanes are approaching or, in some cases, have exceeded the manufacturer's original design goal. This proposal is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. Fatigue cracks in these areas, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATES: Comments must be received no later than August 8, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-64-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314.

This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 E. Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to particiapte in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-64-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidents of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed this goal. In order to evaluate the impact of increased fatigue cracking with respect to maintaining the safe design of the Fokker Model F-27 airplane structure, the manufacturer has conducted a structural reassessment of

these airplanes using engineering evaluation techniques. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91-60, "Continued Airworthiness of Older Airplanes."

In response to AC-91-60, Fokker initiated the development of a Structural Integrity Program (SIP) for the Models F-27 airplanes, and coordinated their efforts with the operators of Model F-27 airplanes. To make maximum use of service experience and existing maintenance programs, Model F-27 operators have participated with the manufacturer and the FAA in generating the Model F-27 SIP. Advisory Circular 91-60 promotes the preparation and approval of a criteria document for such a program. Fokker developed criteria and guidelines for: (a) Selecting the major areas of the structure, identified as significant structural items (SSI), which are candidates for supplemental inspection by using the latest engineering analysis techniques; and (b) analyzing existing inspection programs. This Structural Integrity Program is a supplement to the current normal maintenance inspection programs to detect fatigue damage, and provides detailed non-destructive inspection (NDI) procedures to supplement the operators' existing inspection programs, as necessary. The program was established on evaluation of full scale and/or detailed tests and/or calculations and/or service experience. The document's purpose is to maintain the structural integrity of the Model F-27. It specifies the requirements for known and anticipated defects associated with fatique, corrosion, stress corrosion, accidental damage, or manufacturing defects.

The F-27 Structural Integrity Program (SIP) Part I Document No. 28438 provides information addressing retirement lives, stress, corrosion, and fatigue inspections. Part II Document No. 28411 provides instructions for the "high time inspections."

The SIP inspection program is based on Model F-27 current usage, durability assessment of the structure using current analysis techniques, and selection of the current (NDI) methods. In order to implement the SIP inspection program, each operator must compare its current structural maintenance program to the SIP requirements. If the current inspections equal or exceed the SIP requirements, no supplemental inspections would be required for that area under the SIP program. However, if the opposite is true, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary in addition to the operator's normal maintenance program.

Since the emphasis of the SIP program is on aging aircraft, the inspection program emphasis is on the high time aircraft population. The date and flight hours (or landings) at which modification or replacement is made, would be required to be reported by the operator to the manufacturer for each applicable airplane by fuselage number and/or factory serial number. That particular configuration is then evaluated by Fokker. The inspection threshold and interval will be established, and changes, if needed, would be published in the next revision of the SIP.

Inspection Program

The expected fatigue life of each significant structural item (SSI) is determined by a demonstrated life, either by service experience or by analysis. The time when the supplemental inspections are to begin or be completed is determined from the expected fatifue life and crack propagation characteristics of each SSI. All inspections are to be accomplished before the airplane exceeds the fatigue life threshold.

The results of the supplemental inspections are to be reported to the manufacturer in accordance with the SIP. This information will be presented in the periodic revisions.

Effects on Existing Maintenance Programs

In developing the SIP, the manufacturer and operators reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SIP program. As a result, the Fokker F-27 SIP allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their airplanes.

This airplane model is manufactured in The Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilaterial airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require supplemental structural inspections, and repair or replacement, as necessary, in accordance with the SIP documents described above.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 38 airplanes of U.S. registry would be affected by this AD. Implementation of the SIP into an operator's maintenance program is estimated to require 225 manhours per airplane, at an average labor cost of $40 per manhour (approximately $9,000 per airplane). The recurring inspections are estimated to require approximately 138 manhours per airplane at an average labor cost of $40 per manhour ($5,520 per airplane). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $342,000 to initially implement the SIP, and $209,760 per year thereafter.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Felxibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F-27 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepard for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administartor, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to all Model F–27 series airplanes, certified in any category. Compliance required indicated in the body of the AD, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection of the Significant Structural items defined in Fokker Structural Integrity Program, Part I Document No. 27438, revised February 1, 1987, and Part II Document 27441, dated December 15, 1987. The non-destructive inspection techniques set forth in the SIP provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to Fokker, in accordance with the instructions of the SIP.

B. Cracked structure detected during the inspection required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in the SIP.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable leve of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

The FAA will request **Federal Register** approval to incorporate by reference the manufacturer's service documents identified and described in this proposed directive.

Issued in Seattle, Washington, on June 6, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–13179 Filed 6–10–88; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9175]

General Nutrition, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment; Comment Period

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; comment period.

SUMMARY: This document announces the initiation of a new comment period for a Commission document previously published in the **Federal Register** on Thursday, March 24, 1988.

DATE: Comments must be received on or before August 12, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler, FTC/S–4002, Washington, DC 20580. (202) 326–3090.

SUPPLEMENTARY INFORMATION: In FR Doc. 88–6436, appearing in the **Federal Register** issue for Thursday, March 24, 1988, 53 FR 9666, the date by which comments must be received should now be on before August 12, 1988. The proposed consent agreement has recently been placed on the public record for a period of sixty (60) days. Public comment is invited.

List of Subjects in 16 CFR Part 13

Food supplements, Trade practices.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88–13232 Filed 6–10–88; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 13

[File No. 861 0038]

The Vons Companies et al.; Proposed Consent Agreement With Analysis To Aid Public Comment; Correction

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Thursday, June 2, 1988, 53 FR 20131. The previous document initiated a comment period of sixty (60) days for the proposed consent agreement. The Commission had, however, issued a directive to reduce the public comment period from 60 days to 30 days in order to permit earlier consideration of the consent order.

DATE: Comments will be received until July 5, 1988.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joan S. Greenbaum, FTC/S–3302, Washington 20580. (202) 326–2629.

SUPPLEMENTARY INFORMATION: In FR Doc. 88–12442, appearing in the **Federal Register** issue for Thursday, June 2, 1988, 53 FR 20131, the deadline date for receiving comments should be July 5, 1988.

List of Subjects in 16 CFR Part 13

Supermarkets, Trade practices.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88–13233 Filed 6–10–88; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 305

Regulatory Flexibility Act Review of Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Notice Terminating Regulatory Flexibility Act Review of the Appliance Labeling Rule, and Summary and Analysis of Comments.

SUMMARY: On April 8, 1985, the Federal Trade Commission ("the Commission"), in accordance with the Regulatory Flexibility Act [1] and publication of a Plan for the Periodic Review of Commission Rules,[2] published a notice in the **Federal Register** [3] soliciting comments and data on whether the Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act, 16 CFR Part 305 ("the Rule" or "the Appliance Labeling Rule") has had a significant economic impact

[1] Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1982) ("the RFA").

[2] 46 FR 35118 (July 7, 1981).

[3] 50 FR 13820 (April 8, 1985) ("the Notice").

on small entities,[4] and if it has, whether the Rule should be amended to minimize any such economic impact. The Notice requested that all comments and data be submitted to the Commission no later than May 8, 1985. These comments are summarized in this notice. Based on the comments received, the Commission finds that there is an insufficient basis to conclude that the Appliance Labeling Rule has had a significant economic impact upon a substantial number of small entities. The Commission, therefore, is terminating this proceeding.

DATE: This action is effective as of June 13, 1988.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Federal Trade Commission, Division of Enforcement, Washington, DC 20580, 202–326–3035.

SUPPLEMENTARY INFORMATION:

I. Background

Section 324 of the Energy Policy and Conservation Act (EPCA) [5] required the Federal Trade Commission to consider issuing labeling rules for the disclosure of estimated annual energy costs or alternative energy consumption information for at least 13 categories of major household appliances. The statute also required that the disclosures be based on standard test procedures prescribed by the Department of Energy (DOE). On November 19, 1979, the Commission issued a final rule [6] for seven appliance categories: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes washers; (5) water heaters; (6) room air conditioners; and (7) furnaces. The Commission exempted five other categories of appliances [7] either because the cost difference between the least and most efficient appliances was not large enough to be likely to affect consumer purchase decisions, or because the appliances were already highly efficient and not substantial energy users. The Commission recently amended the Rule to include the category of central air conditioners and heat pumps.[8]

The Rule requires that energy information, including energy costs (in dollars) or energy efficiency information (disclosed as energy efficiency ratings (EER)), based on the DOE test procedures, be disclosed on labels and in retail sales catalogs for all covered products except furnaces. The yellow and black labels must include a highlighted energy cost or efficiency disclosure, a range indicating the highest and lowest energy costs or efficiencies for all similar appliance models, and a chart that permits an individual to estimate how much it will cost to run the appliance each year. For furnaces, the energy usage information must be disclosed on separate fact sheets, while the labels on the furnaces themselves disclose energy-saving tips and direct consumers to the fact sheets. For central air conditioners and heat pumps, the label must contain the EER and range information. Additional energy usage and cost information must be either on fact sheets or in a directory.

Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

The statute and the Rule both place responsibility for testing and labeling on manufacturers. The responsibility of retailers is limited to refraining from removing labels or rendering them illegible. Violations are punishable by fines of $100 for each unit in violation.

The Regulatory Flexibility Act requires that the FTC conduct a periodic review of rules that have or will have a significant economic impact upon a substantial number of small entities.[9] The purpose of this review is limited to determining whether the Rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the Rule upon a substantial number of small entities.

In order to conduct the periodic review of this Rule pursuant to the RFA, the Commission, in the Notice, posed the six questions detailed below for comment. The Commission requested the factual data (*e.g.*, economic and accounting information, statistical analysis, surveys, studies, etc.) upon which submitted comments are based be included with the comments.

On the basis of the comments received, and for other reasons, discussed below, the Commission lacks sufficient evidence to conclude that the Appliance Labeling Rule has had a significant economic impact on a substantial number of small entities. However, the Commission is initiating today a separate rulemaking proceeding that addresses, among other things, concerns that have been raised in comments in this proceeding.

II. The Comments

There were six questions posed in the Notice. Twenty-five comments were submitted.[10] Seventeen comments came from the industry: Four from trade associations [11] and thirteen from appliance manufacturers. Two of the manufacturers appeared to be larger than "small entities." [12] Nine manufacturers characterized themselves in one way or another as being small businesses [13], and one company, although it appeared from its comment to be a "small entity," did not so characterize itself.[14] Seven comments

---

[4] The definition of the term "small entity" was set out in the Notice. See footnote 9, below.

[5] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6294 (Dec. 22, 1975).

[6] 44 FR 66466 (Nov. 19, 1979), codified at 16 CFR Part 305.

[7] The appliances exempted were clothes dryers, home heating equipment (other than furnaces), television sets, kitchen ranges and ovens, and humidifiers and dehumidifiers.

[8] 52 FR 46888 (Dec. 10, 1987).

[9] For the purpose of this review under the RFA, the term "small entity" is defined under the Small Business Size Standards, codified at 13 CFR Part 121, and recently revised by the Small Business Administration (49 FR 5024 *et seq.* (Feb. 9, 1984)). The definitions of "small entity" applicable to those business entities covered by the Rule are: For manufacturers of air conditioning and warm-air heating equipment, fewer than 750 employees; for manufacturers of refrigerators, freezers and clothes washers, fewer than 1,000 employees; for manufacturers of other covered appliances, fewer than 500 employees; for wholesalers of electrical appliances, fewer than 500 employees; for department stores, under $13.5 million in annual sales; for retailers of household appliances, under $4.5 million in annual sales; and, for plumbing, heating and air conditioning contractors, under $7 million in annual sales.

[10] The comments have been placed on the public record in this proceeding under category 23 (Regulatory Flexibility Act Review Comments) of Public Record Docket No. 209–18. They are designated 23–1 through 23–25. References to the comments will be made by means of the single-word name of the commenter (last name for individuals, primary name for corporations), the number of the comment, and, when appropriate, the page of the comment. For example, a reference to page 2 of the comment submitted by W.C. Wood Company Limited would be designated as: Wood, 23–6/2.

[11] The Hydronics Institute ("Hydronics"), 23–11; the Manufactured Housing Institute ("MHI"), 23–13; the Air-Conditioning and Refrigeration Institute ("ARI"), 23–14; the Gas Appliance Manufacturers Association ("GAMA"), 23–19.

[12] Admiral Division of Magic Chef, Inc. ("Admiral"), 23–4; First Company ("First"), 23–5.

[13] Dornback Furnace and Foundry Co. ("Dornback"), 23–1; General Machine Corporation ("General"), 23–3; W.C. Wood Company, Ltd. ("Wood"), 23–6 & –7; Bard Manufacturing Company ("Bard"), 23–12; Ford Products Corporation ("Ford"), 23–15; Oneida Royal Inc. ("Oneida"), 23–17, Defiance International ("Defiance"), 23–18; 20th Century Heating and Ventilating Co. ("20th Century"), 23–24; Thermo Products, Inc. ("Thermo"), 23–25.

[14] Consolidated Industries Corp. ("Consolidated"), 23–2.

were received from consumers [15] and one comment was received from a state energy office.[16]

The following discussion treats each question in sequence and the comments received pertaining to that question. As an aid to discussing the questions with respect to which there were several comments, the comments have been divided into two groups—those generally in support of the Rule and those generally in opposition to the Rule. Discussion follows the comments.

A. *Question 1:* Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive economic impact.

Comments in Support of the Rule

The Hydronics Institute is the national trade association for boiler manufacturers and producers of other hydronic heating components.[17] Commenting on behalf of its membership, Hydronics noted that by increasing consumer information, and thereby offering product choice, the labeling program "* * * has been a stimulus to boiler manufacturers to improve the efficiency of their products, as was intended by the Rule. The manufacturers now compete for the contractors' business on the basis of high efficiency, and this has led to installation of more high-efficiency boilers." [18] The Hydronics Institute also noted that the Rule exerted no undue burden on manufacturers.

The three manufacturers who commented in favor of the Rule voiced similar opinions. Ford Products, a manufacturer of hydronic boilers, warm air heating equipment and water heaters, has not found it difficult to comply with the Appliance Labeling Rule to date. Ford believes that uniform testing procedures and labeling make it possible for manufacturers successfully to sell more efficient products that cost more. The Rule, according to Ford, enables manufacturers to explain, using the required information, that the extra cost will be paid back over time by dollar savings resulting from the higher efficiency of the product.[19]

The W.C. Wood Co., a manufacturer of refrigerators and freezers, believes that the Rule has resulted in keener competition between manufacturers to produce more efficient products, which, in turn, has resulted in overall improvements in energy consumption in the home appliance area. Wood believes that the Rule does not place any undue burden on manufacturers, and believes that the Rule benefits manufacturers because

> * * * it gives an honest yardstick for comparison of efficiencies in the market place. A manufacturer who puts an extra effort into achieving superior energy efficiency of his products is able to make this advantage visible." [20] General Machine Corporation, a manufacturer of boilers and furnaces, describes itself as "a very small company." General stated that the Rule benefits its company and the industry in general. In addition, General commented, "* * * it has helped to promote the development and sale of higher efficiency equipment since its inception. The cost of testing and labeling has not caused an economic hardship on us." [21]

Comments in Opposition to the Rule

Seven manufacturers [22] stated that the Rule has had a negative economic impact on them, or on the industry as a whole. Four of these manufacturers [23] shared in the concern that compliance with the DOE test procedures and the Commission's Rule puts them at a competitive disadvantage with respect to their larger competitors. As articulated by Bard:

> The Rule has had a significant economic impact on us as a small manufacturer because we do not have the production requirements as compared to a large manufacturer. The cost to implement the FTC law are the same whether a manufacturer is small or large; however, the fixed cost with a large manufacturer are spread over his large production of units, whereas, our costs to a small manufacturer are much greater in proportion because of our low unit volume. We figure that our unit cost to label will run approximately $10 to $12 per unit and we assume that the larger manufacturer * * * will run approximately 45 [cents] per unit.[24]

The First Company stated that the labeling requirement is extremely burdensome to First and provides no benefit to the public, since most of its furnaces and air conditioning equipment are sold to installing dealers and distributors. First, stated that it has spent over $30,000 on "these labels" over the past three to four years without being able to detect any measurable results.[25]

Admiral noted that small dealers [26] experience a negative economic impact because the cost information on the labels changes from time to time due to the increased national average cost for energy as published by DOE.[27] Admiral pointed out that this can result in labels showing different energy costs (since they are based on different unit cost for energy) on identical models. Consequently, Admiral maintains, "[t]he dealer must sell the floor samples, often at mark downs and physically replace them with new units." [28]

Discussion

The Commission believes that the alleged adverse economic impact and the other concerns raised by these seven manufacturers, while obviously significant and deserving of attention, do not provide a sufficient basis for the Commission to conclude that the Rule has had a significant economic impact upon a substantial number of small entities. Therefore, no modifications to the Appliance Labeling Rule in this proceeding are proposed.

First, Congress was aware that compliance with the mandates in the Energy Policy and Conservation Act (EPCA)[29] would not be without cost

---

[15] Parker, 23–8; Pike, 23–9; DeLeo, 23–10; La Penta, 23–20; Angell, 23–21; Stapl, 23–22; Mancini, 23–23.

[16] Iowa Energy Policy Council, State Energy Office of Iowa ("Iowa"), 23–16.

[17] The other main trade associations representing manufacturers of central environmental conditioning system are GAMA, 23–19 and the ARI, 23–14.

[18] 23–11/1.

[19] 23–15/1.

[20] 23–6/2.

[21] *Id.*

[22] Dornback, 23–1, Consolidated, 23–2, First, 23–5, Bard, 23–12 and 20th Century (all manufacture furnaces; First and Bard manufacture central air conditioners as well) noted their problems and expressed unequivocal opposition to the Rule. Admiral, 23–4 (manufacturing most major appliances, except furnaces and central air conditioners) and Thermo, 23–25 (manufacturing furnaces and air conditioners), while expressing problems with the Rule and suggesting modifications to it, are nonetheless generally in favor of the Rule's objectives of energy conservation and energy usage disclosure.

[23] Dornback, 23–1; Consolidated, 23–2; Bard, 23–12; Thermo, 23–25.

[24] 23–12/1.

[25] 23–5. Of course, the ultimate purchasers here are actually the consumers into whose home the products are installed, and § 305.11(b)(1) of the Rule requires that they be shown fact sheets before purchase.

[26] "Products manufactured by the Admiral and Magic Chef Divisions of Magic Chef, Inc. are distributed nationally through over 7,000 independent dealers. Most of these dealers represent small businesses within the community they serve." Admiral, 23–4/1

[27] Under the Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. Ranges are compiled by the Commission from manufacturers' data derived by following the DOE test procedures, and using the current representative average unit cost for energy as published by DOE annually. The data are submitted to the Commission in accordance with § 305.8 of the Rule.

[28] 23–4/1.

[29] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6201 (1975).

when it enacted that law. Moreover, there are a substantial number of comments on the record in the instant proceeding (just discussed) to the effect that the Rule is not unduly burdensome for small entities.

Second, under the statute, in order for a manufacturer to make energy claims, DOE-specified tests must be performed. For example, manufacturers cannot legally make any energy usage or cost representations, including certifications to trade associations for inclusion in directories, without first having performed the DOE test procedure on the basic model in question. This is true irrespective of the Commission's Rule. Consequently, although the representations on fact sheets for furnaces must, by statute and regulation, be based on the DOE test procedures, the cost of performing the test procedures should not be viewed as exclusively a negative economic impact resulting from the labeling requirements of the Commission's Rule.

Finally, with respect to burdens described by the furnace manufacturers and the label problems described by Admiral, the Commission, in a separate rulemaking proceeding commenced today, is considering amendments to the Rule that would address these issues.

B. *Question 2:* Is there a continued need for the Rule and all of its requirements?

Comments in Support of the Rule

Consumer letters frequently expressed that continuing the Rule's requirements is justified because the Rule provides pre-purchase comparative information at the point of purchase.[30]

Two manufacturers commented in favor of the Rule directly in response to this question.[31] For example, Wood believes that the Rule is responsible for energy consumption savings in two ways. First, the disclosures enable the buying public to use energy consumption as a means of comparison when purchasing. Second, because energy usage of appliances is now public information, competition is sharpened between manufacturers to come up with more efficient products.

The Manufactured Housing Institute commented that energy usage information, primarily with respect to furnaces, is indeed important, and that energy usage information should continue to be disseminated for these appliances. MHI believes that, instead of appearing on separate fact sheets, the specific energy usage information should be on labels attached to the furnaces sold in new homes, in order to improve the program.[32] The Hydronics Institute, representing boiler manufacturers, noted that now that the labeling program is in place for furnaces, "[t]o eliminate the labeling requirement would cause new confusion, and might lead to distortion of advertised facts on the part of some producers or installers."[33]

The Iowa Energy Policy Council provided charts with its comment to show the cost effectiveness of buying more efficient appliances. In supporting the notion of continuing the Rule's requirements as to all products, the Council noted, "* * * if a consumer does not have (the energy) information at their disposal, they are not able to make an intelligent informed decision."[34]

Comments in Opposition to the Rule

The four furnace manufacturers [35] agreed that, for furnaces, the requirements of the Rule are not necessary and never were. According to these commenters, the fact sheets are superfluous because the manufacturers provide the energy usage information with materials they already produce in connection with the sale of their products, either independently or in trade-association-produced directories.

Two trade associations, ARI [36] and GAMA [37], share in the opinion that, with respect to furnaces and water heaters, the Rule should no longer apply. According to these associations, because of the way in which these products are marketed, it would make more sense for energy usage disclosures to be made in the trade associations' Directories than on fact sheets. In this way, consumers ultimately would be given the energy usage information by dealers and installers, without unnecessary expenditures to manufacturers.

Discussion

The comments in support of the Rule's continuation make, by themselves, a strong case in favor of the Appliance Labeling Rule. These comments indicate that the Rule is informing consumers about energy efficient characteristics of covered products. However, with respect to the concerns expressed by the furnace manufacturers and their trade associations,[38] the Commission is proposing to amend the Rule to include a directory option for furnace manufacturers in a separate proceeding.

C. *Questions 3:* (a) What burdens, if any, does compliance with the Rule place on small entities?

(b) To what extent are these burdens that small entities would also experience under standard and prudent business practices?

Apparently, because of the similarity between Question 1 [39] and Question 3(a), comments that are responsive to one of these questions are also responsive to the other. Therefore, for a review of comments that pertain to question 3(a), see the earlier discussion relating to Question 1.

The Hydronics Institute, commenting on behalf of manufacturers of boilers, noted that, although there were initially objections to testing and catalog revisions to accommodate the new data required by the Rule and the DOE test procedures, these changes have been made and the pattern is now accepted as standard practice.[40]

Ford Products noted that "The burdens placed by the Rule are no greater a strain to the small entity than could be expected from the normal performance evaluation and product testing carried out by a manufacturer of heating appliances, using prudent business practices." [41]

D. *Question 4:* What changes, if any, should be made to the Rule that would minimize the economic effect on small entities?

Three manufacturing companies [42] joined with one trade association [43] in suggesting that manufacturers of furnaces be afforded the option of complying with the Rule's disclosure requirements for their products by being listed in a trade association directory like the one currently produced by GAMA. GAMA also suggested that the Rule be modified to allow this option for manufacturers of water heaters as well.

[30] Parker, 23–8; Pike, 23–9; DeLeo, 23–10; Angell, 23–21; Stapl, 23–22.

[31] Wood, 23–6; Ford, 23–15. It appears that Admiral, 23–4, and General, 23–3, also see a continued need for the Rule (Admiral suggests modifications), but their comments do not articulate this directly.

[32] 23–13.

[33] 23–11/2.

[34] 23–16/2.

[35] Dornback, 23–1; Consolidated, 23–2; First, 23–5; Bard, 23–12. Bard also manufactures central air conditioners and heat pumps, and First also manufactures air conditioning equipment.

[36] 23–14.

[37] 23–19.

[38] See discussion at the end of Question 1.

[39] "Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive impact."

[40] 23–11/2.

[41] 23–15/2.

[42] Ford, 23–15/1; Oneida, 23–17; Thermo, 23–15.

[43] GAMA, 23–19/1–2.

Three manufacturers of furnaces [44] suggested that the Rule and/or EPCA be amended so that furnaces are not covered.

Admiral [45] and Wood [46] suggested that the Rule be amended so energy usage for covered products other than furnaces and room air conditioners would be expressed in terms other than dollars. This would eliminate the need for periodic update of labels and the resulting consumer confusion and dealer inconvenience.[47] Wood suggested that kilowatt hours per year (kwh/yr) be substituted, while Admiral suggested the use of an energy efficiency rating (EER).

The Manufactured Housing Institute suggested amending the Rule to require that furnaces bear labels showing their EER rating, rather than the labels currently required that simply direct consumers to ask for fact sheets showing that information.[48]

As discussed earlier, there is insufficient evidence for the Commission to conclude that the Rule has had a significant economic impact on a substantial number of small entities. Therefore, the Commission is not amending the Rule in this proceeding.

E. *Question 5:* To what extent does the Rule overlap, duplicate or conflict with other federal, state and local government rules?

Two manufacturers responded directly to this question.[49] Defiance noted its belief that there is no duplication or conflict with other rules, and Ford Products suggested that the Rule could be improved in this regard by insuring that there is consistency in test procedures required by various localities.

Since Section 327 of EPCA establishes that the Commission's Rule will be preemptive of any state regulations, the Commission will make no changes in the Rule.

F. *Question 6:* Have technology, economic conditions or other factors changed in the area affected by the Rule since its promulgation in 1979 and, if so, what effect do these changes have on the rule or those covered by it?

There were no substantive comments in response to this question.

III. Conclusion

After carefully considering the comments, the Commission believes that they do not present a sufficient basis to conclude that the Appliance Labeling Rule has had a significant economic impact upon a substantial number of small entities. The Commission is therefore terminating this proceeding. However, some of the comments raise issues or make suggestions that are being explored in a separate amendment proceeding.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1980).

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-13068 Filed 6-10-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF JUSTICE

Justice Management Division

28 CFR Part 11

[Order No. 1280-88]

Debt Collection, Tax Refund Offsets for Collection of Judgments

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice amends Part 11 of Title 28 of the Code of Federal Regulations by establishing procedures for referring to the Secretary of the Treasury debts for collection by offset against Federal income tax refunds. This regulation is intended to strengthen the ability of the Department to collect outstanding debts.

DATES: Comments must be received on or before July 13, 1988.

ADDRESS: Comments should be addressed to Robert C. Niffenegger, United States Department of Justice, Office of the Comptroller, Justice Management Division, Room 1121, 10th Street and Constitution Avenue NW., Washington, DC 20530. All comments submitted in response to this final regulation will be available for public inspection, during and after the comment period, at this address between the hours of 9 a.m. and 5 p.m., Monday through Friday of each week, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert C. Niffenegger (202) 633-5345. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

Section 2653 of the Deficit Reduction Act (31 U.S.C. 3720A) authorizes the Secretary of the Treasury to offset a delinquent debt owed to the Federal Government from the income tax refund due a taxpayer when other collection efforts have failed to recover the amount due. The purpose of the Act is to improve the ability of the Government to collect money owed it while adding certain notice requirements and other protections for the debtor. This rule implements section 2653 of the Act.

The statute directs any Federal agency that is owed a past due, legally enforceable debt by a named person to notify the Secretary of the Treasury in accordance with regulations issued by the Department of Treasury (Treasury) at 26 CFR 301.6402-6T (1986). Before a Federal agency may give such notice, however, it must first: (1) Make a reasonable attempt to notify the debtor that the agency proposes to refer the debt for a tax refund deduction; (2) give the debtor 60 calendar days from the date of the Department's Notice of Intent to present evidence that all or part of the debt is not past due or legally enforceable; (3) consider all evidence the debtor presents before determining that all or part of the debt is past due or legally enforceable; and (4) satisfy any other conditions that the Secretary of the Treasury may prescribe to ensure that the agency's determination is valid and that the agency has made reasonable efforts to obtain payment of the debt. Treasury's rules for offsets against tax refund are currently limited to individual taxpayers for a period beginning on January 1, 1986 and ending June 30, 1988.

The rule provides that, before the Department of Justice will refer a debt to Treasury (through IRS), notice of that intention will be sent to the debtor. This notice will inform the debtor of the nature and amount of the debt, that unless the debt is repaid within 60 calender days from the date of the Department's Notice of Intent, the Department intends to collect the debt by requesting the IRS to offset any tax refund payable to the debtor and that the debtor has a right to a review within the Department.

The Department plans to use these procedures vigorously to obtain tax offsets to collect outstanding judgments in favor of the United States. The Department will refer to the IRS for tax refund offset final civil judgments containing money awards and final criminal judgments that include fines and/or other assessments of money.

---

[44] Dornback, 23-1/2; Consolidated, 23-2/2; First, 23-5. First also manufactures central air conditioning equipment.

[45] 23-4/2.

[46] 23-7/1-2.

[47] See earlier discussion under responses to Question 1.

[48] 23-13.

[49] Ford, 23-15/2; Defiance, 23-18/2.

Since these referrals will be of final judgments, the taxpayer may not raise issues related to the fact or the amount of judgment.

The taxpayer will be provided with notice that the Department plans to refer the taxpayer's judgment debt to the IRS for offset of any Federal tax refund, and will be provided 60 days in which to present evidence that all or part of a civil judgment or a criminal fine and/or assessment is not past-due, or to present evidence that the amount of the civil or criminal judgment debt to be reported to the IRS is not the amount currently owed, or to show that the judgment has been stayed or satisfied.

If the taxpayer does not pay the amount due in the judgment or present evidence that the amount is not past due, nor currently owed in whole or part, nor stayed, nor satisfied, at the end of the notice period, the Department will refer the taxpayer's judgment to the IRS for offset of the taxpayer's Federal tax refund. If the taxpayer responds to the notice and raises objections, the Assistant Attorney General for Administration will review the evidence presented by the taxpayer and determine whether to terminate efforts to offset the judgment, modify the amount to be referred or refer for offset the amount stated in the notice. The Assistant Attorney General for Administration will notify the taxpayer of his or her decision in writing. There is no appeal of this decision.

The statute requires a Federal agency to provide a debtor with notice of a proposed IRS offset and at least 60 days within which to prevent evidence regarding the debt. 31 U.S.C. 3720A(b). Because securing evidence of the date of receipt of the notice is costly and potentially time consuming and the Department considers five days an adequate period for almost all notices to be delivered by mail, the regulations allow five mailing days in addition to the statutory minimum of 60 days from the date of the notice of proposed offset within which the taxpayer may present evidence. The date of the notice is the date shown on the notice letter as its date of issuance. Use of the notice date rather than its receipt date will eliminate confusion and disputes regarding calculation of the 60 day period required by the statute.

Other Matters

This is not a major rule within the meaning of section 1(b) of Executive Order 12291. The Department certifies that this regulation will not have a significant economic impact on a substantial number of small entities. These procedures will only apply to named individuals. Thus, the regulation will not affect any small entities. Accordingly, this rule is exempt from requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612 (Supp. 1986). This rule contains no reporting and record keeping requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 28 CFR Part 11

Claims.

By virtue of the authority vested in me as Attorney General by 31 U.S.C. 3720A and 28 U.S.C. 301, 509 and 510, Part 11 of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 11—[AMENDED]

1. The authority citation for this Part 11 is proposed to be revised to read as follows:

Authority: 28 U.S.C. 301, 509, 510, 31 U.S.C. 3718, as amended by Pub. L. 99–578, 31 U.S.C. 3720A.

2. Part 11 is proposed to be amended by adding Subpart B, consisting of § 11.10, to read as follows:

Subpart B—Tax Refund Offsets

§ 11.10 Procedures for tax refund offsets for the collection of judgments.

(a) The Department may refer any past-due, non-paid final civil or criminal judgment debts imposed by a court of the United States against an individual to the Secretary of the Treasury for offset. (Judgments in amounts lower than $25.00 or outstanding for longer than ten years are not subject to referral.)

(b) The Department will provide the civil or criminal judgment debtor with written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the current address of the debtor, as determined from information obtained from the IRS' prior year's tax records or from information regarding the debt maintained by the Department of Justice. The notice sent to the debtor will inform the debtor that:

(1) The civil or criminal judgment debt is past due;

(2) The Department intends to refer the civil or criminal judgment to the Secretary of the Treasury for offset from income tax refunds that may be due to individuals;

(3) The debtor, within 65 days of the date on the written notice, has an opportunity to:

(i) Present evidence that all or part of a civil judgment debt or a criminal fine and/or assessment is not past-due;

(ii) Present evidence that the amount of the civil judgment debt or criminal fine and/or assessment, as reported to the IRS, is not the amount currently owed;

(iii) Present evidence that the judgment debt has been stayed or satisfied.

(4) If the civil or criminal judgment debtor wishes to contest the offset, he or she must present evidence set forth under paragraph (b)(3) of this section by a date specified in the notice. The debtor must present such evidence to the Assistant Attorney General for Administration at the address specified in the notice. The Assistant Attorney General for Administration will review the evidence and make a determination whether to terminate efforts to offset the judgment, modify the amount to be referred, or refer for offset the amount stated in the notice, and notify the debtor in writing. There is no appeal of this decision.

(5) The authority of the Assistant Attorney General for Administration may be redelegated to subordinate officials as appropriate.

Date: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88–13288 Filed 6–10–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[SECNAV Instruction 5211.5C]

Availability of Department of the Navy Records and Publications of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule.

SUMMARY: A new specific exemption rule is proposed to be added to other existing Navy exemption rules for exempted systems of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, to accomodate a new exempted record system identified as NO1754–3, entitled: Navy Child Development Services Program. Exemption from certain provisions of the Privacy Act must be invoked by rulemaking to protect from access the personal information contained in the new record system.

DATES: Comments must be received on or before July 13, 1988.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch,

Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350.

FOR FURTHER INFORMATION CONTACT: Mrs. Aitken at the above address or telephone: 202-697-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes to exempt certain provisions of a new system of records NO1754-3, "Navy Child Development Services Program" under the provisions of 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974.

List of Subjects in 32 CFR Part 701

Privacy, Exemption, Investigative Information, Records. Accordingly, it is proposed to amend Subpart G of 32 CFR Part 701 as follows:

PART 701—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 552a, 32 CFR Part 286a.

2. Add paragraph (b)(7) to § 701.119.

Subpart G—Privacy Act Exemptions

§ 701.119 Exemptions for specific Navy record systems.

* * * * *

(b) *Naval Military Personnel Command.* * * *

(7) *ID NO1754-3*

System Name. Navy Child Development Services Program.

Exemption. Portions of this system of records are exempt from the following subsections of Title 5 U.S.C. 552a (c)(3) and (d).

Authority: 5 U.S.C. 552a(k)(2).

Reasons. Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the dispositon of charges; and could jeopardize the safety and well being of parents and their children.

* * * * *

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1988.

[FR Doc. 88-13202 Filed 6-10-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-368-P]

Medicare Program; Effect of Appeals on the Hospital-Specific Portion of the Prospective Payment Rate

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend and clarify the prospective payment regulations governing administrative and judicial review of payment amounts in order to resolve confusion concerning interpretation of those regulations. In particular, the rule would amend and clarify the provision pertaining to adjustment of the hospital-specific rate under the prospective payment system.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 12, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-368-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you many deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting please refer to file code BERC-368-P. Comments received timely will be available for public inspection as they are received, which generally begins about three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Edward Rees, (301) 966-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Prospective Payment System

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list currently contains 475 specific categories.

Section 1886(d)(1) of the Act, as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), provides for a four-year transition period during which a declining portion of the total prospective payment rate is based on a hospital-specific rate per discharge, and a gradually increasing portion is based on a Federal rate per discharge. (Section 107(a)(1) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. 100-119) extended the transition period through the first 51 days of a hospital's cost reporting period in the fifth year.) The hospital-specific rate is based on a hospital's historical cost in a given base year. The Federal rate is based on the average of the standardized historical costs of all hospitals, urban or rural, national or regional. The Federal rate is based on regional average standardized amounts in the first year of the transition period, and is a blend of regional and national average standardized amounts in the second year through the first 51 days of a hospital's cost reporting period beginning on or after October 1, 1987. Beginning with the 52nd day of a hospital's cost reporting period beginning in Federal fiscal year (FY) 1988, and continuing thereafter, payment for inpatient hospital services is based on national payment rates.

In order to implement the prospective payment system for inpatient hospital services as required by section 1886(d)

of the Act, we published the following documents in the Federal Register.

- On September 1, 1983, we published an interim final rule with comment period (48 FR 39752), effective for hospital cost reporting periods beginning on or after October 1, 1983. Technical corrections were issued on October 19, 1983 (48 FR 48467).
- On January 3, 1984, we published a final rule (49 FR 234) to make changes to the regulations as the result of our consideration of the public comments that were received in response to the interim final rule. Technical corrections for this document were issued on June 1, 1984 (49 FR 23010).
- In order to update the prospective payment rates for FY 1985, we published a proposed rule on July 3, 1984 (49 FR 27422) and a final rule on August 31, 1984 (49 FR 34728), for which technical corrections were issued on October 15, 1984.
- On March 29, 1985, we published a final rule (50 FR 12740) redesignating the prospective payment regulations, originally set forth in 42 CFR Part 405 (§§ 405.470 through 405.477), to a new 42 CFR Part 412 (§§ 412.1 through 412.125).
- In order to update the prospective payment rates for FY 1986, we published a proposed rule June 10, 1985 (50 FR 24366) and a final rule on September 3, 1985 (50 FR 35646), for which technical corrections were issued on October 28, 1985 (50 FR 43570).
- On May 6, 1986, we published an interim final rule (51 FR 16772) effective May 1, 1986 or earlier to make changes in the regulations as required by the Consolidated Omnibus Reconciliation Act of 1985 (Pub. L. 99–272).
- In order to update the prospective payment rates for FY 1987, we published a proposed rule on June 3, 1986 (51 FR 19970), and a final rule was issued on September 3, 1986 (51 FR 31454), for which technical corrections were issued on October 1, 1986 (51 FR 34980).
- On November 24, 1986, we published a final rule with comment period (51 FR 16772) effective October 1, 1986 to make changes in the regulations as required by the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509).
- In order to update the prospective payment rates for FY 1988, we published a proposed rule on June 10, 1987 (52 FR 22080) and a final rule on September 1, 1987 (52 FR 33034), for which technical corrections were issued on September 18, 1987 (52 FR 35350) and October 9, 1987 (52 FR 37769).
- As a result of the enactment of Pub. L. 100–119, we published a notice on October 23, 1987 (52 FR 39637) to describe a temporary extension of the FY 1987 prospective payment rates and the fourth year of the prospective payment system transition period. That extension was effective through November 20, 1987, or for the first 51 days of a hospital's cost reporting period beginning in FY 1988.

B. Issues To Be Addressed in This Proposal

Section 1878 of the Act (implemented by the regulations in 42 CFR Part 405, Subpart R) authorizes administrative and judicial review of certain aspects of prospective payment rates. Medicare regulations currently address this appeals process and the effect of successful appeals by hospitals of the rates (42 CFR 412.72), but there appears to be some continuing public confusion about the applicable provisions. This confusion is particularly evident with respect to issues affecting the hospital-specific rate.

This document outlines the appeals process and the principles governing appeals and remedies resulting from appeals and proposes to reorganize and clarify the regulations to make these rules clear. In addition, to the extent a revision of the rates is permitted, we are proposing changes that would authorize a downward revision under the same conditions that permit an upward adjustment. Errors that inappropriately advantage or disadvantage hospitals should be treated in a like manner.

II. Administrative and Judicial Review

A. The Appeals Process

A fiscal intermediary's determination of a hospital's prospective payment amount is generally appealable. The intermediary must furnish the hospital with written notice reflecting the intermediary's determination of the total amount of reimbursement due the hospital. This written notice, which is called a Notice of Amount of Program Reimbursement (NPR), is with certain exceptions subject to review by the Provider Reimbursement Review Board (hereinafter referred to as the Board).[1]

The Board has jurisdiction to review the intermediary's determination under the conditions set forth in section 1878 of the Act. The provisions of that section enable a hospital that has timely filed a cost report and has made a claim for additional reimbursement to obtain a hearing with the Board if, among other things—

- The hospital is dissatisfied with its intermediary's final determination of total program reimbursement due;
- The amount in controversy is $10,000 or more; and
- The hospital files a request for a hearing within 180 days after notice of the intermediary's final determination.

The Board has the power to affirm, modify, or reverse a final determination of the intermediary, and its decision is final unless the Secretary, on the Secretary's motion and within 60 days after the hospital is notified of the Board's decision, reverses, affirms, or modifies that decision. (This authority has been delegated to the Administrator and Deputy Administrator of HCFA. Regulations concerning this review of Board decisions are located at § 405.1875.) Hospitals have a statutory right under section 1878 of the Act to seek judicial review in federal district court of any final decision of the Board or of any reversal, affirmance, or modification of that decision by the Administrator or Deputy Administrator acting for the Secretary.

Section 1878 of the Act also provides that a hospital may obtain judicial review of a question of law or regulations without first securing a hearing before the Board if the Board determines on its own motion, or after consideration of a request for such review, "* * * accompanied by such documents and materials as the Board shall require for purposes of rendering such determination * * *," that it lacks authority to decide such issues. The hospital, even if it has requested expedited judicial review, must nevertheless meet the jurisdictional requirements of section 1878 of the Act.

Consequently, the Board first must determine that it has jurisdiction over the case before it can decide whether the hospital is entitled to expedited judicial review. The Board has 30 days within which to make the expedited review decision once it has determined that it has jurisdiction and it has received all necessary documentation required for the expedited review decision. The determination that it lacks authority to decide an issue in a case over which it has jurisdiction is considered a final decision for purposes of judicial review.

[1] There is controversy and litigation over whether certain prospective payment determinations may be appealed to the Board prior to the issuance of an NPR. (Compare HCFA Ruling 84–1 (49 FR 22413, May 29, 1984) and *Springdale Memorial Hospital Assn., Inc. v. Bowen*, No. 86–1745 (8th Cir. May 11, 1987) with *Washington Hospital Center v. Bowen*, 795 F.2d 139 (D.C. Cir. 1986); *Doctors Hospital, Inc. v. Bowen*, 811 F.2d 1448 (11th Cir. 1987); *Sunshine Health Systems, Inc. v. Bowen*, 809 F.2d 1390 (9th Cir. 1987); and *St. Francis Hospital v. Bowen*, 802 F.2d 697 (4th Cir. 1986)).

B. The Hospital-Specific Rate

The principal purpose of the prospective payment system is to increase the efficiency of the Medicare program by permitting hospitals to keep payment amounts in excess of their costs and requiring them to absorb costs in excess of payment amounts. (See S. Rep. No. 23, 98th Cong., 1st Sess. 47 (1983), reprinted in 1983 U.S. Code Cong. & Ad. News 143, 187; H.R. Rep. No. 25, 98th Cong., 1st Sess. 132 (1983), reprinted in 1983 U.S. Code Cong. & Ad. News 219, 351; 42 CFR 412.1(a).) Congress found that under the cost-based reimbursement system hospitals lacked incentives for efficiency. (See S. Rep. No. 494, 97th Cong., 2d Sess. 26–67 (1982), reprinted in 1982 U.S. Code Cong. & Ad. News 781, 802–03.) Although there were some limits on overall payment amounts, the cost-based method responded to hospital cost increases by providing increased reimbursement.

The change from cost reimbursement to the prospective payment system was expected to redistribute substantial amounts of Medicare funds from inefficient hospitals to efficient hospitals. To cushion these effects, the statute established a four-year transition period before fully national urban and rural payment rates (adjusted for local wages and the higher cost of living in Alaska and Hawaii) would apply. (The length of the transition as originally set forth by Congress was three years, but was extended to four years by section 9102 of Pub. L. 99–272.) As discussed earlier, for each year during the transition, an increasing proportion of the payment rate is based on a "federal" portion (determined by reference to the historical costs of all hospitals in the country or a region), and a declining proportion of the payment rate for each discharge (the "hospital-specific" portion) is based on the historical costs of the particular hospital involved.

To establish a hospital-specific rate, the intermediary first estimated the hospital's allowable costs for the base period (generally, the most recent 12-month or longer cost reporting period ending before September 30, 1983 (§ 412.71(a)). The intermediary then modified the allowable base-period operating costs, based on available data, to make the hospital's reported base-period experience comparable to those same types of costs that would be incurred during the transition period (for example, by removal of nonrecurring costs) (§ 412.71(b)). If the hospital requested it, the intermediary made further modifications to its estimate to take into account FICA taxes and also services reimbursed under Part B of Medicare (Supplementary Medical Insurance) during the hospital's base period, which were to be reflected in prospective payment amounts once the prospective payment system was in place (§ 412.71(c)).

Through this process, the intermediary could take into account any additional data presented by the hospital. Finally, the intermediary divided total allowable operating costs by the number of discharges in the base-period and by the hospital's 1981 case-mix index. The cost per discharge as adjusted by the case-mix index and updated by the applicable updating factor became the hospital's hospital-specific payment rate for the prospective payment system transition period (§ 412.73).

C. Review of the Hospital-Specific Rate

As explained above, determination of the hospital-specific rate involves ascertaining the amount of a hospital's allowable inpatient operating costs during the specified base-period, modifying these costs in certain respects to make them consistent with the types of costs the hospital would be expected to incur under the prospective payment system, converting the total operating costs, as modified, to a cost per discharge, and adjusting the operating cost per case by the hospital's case-mix index.

Disputes may arise over the amount of costs incurred during the base period itself, including amounts that were disallowed for purpose of computing inpatient cost reimbursement for each hospital's base period. In addition, disputes may arise with respect to the modifications to these base-period costs necessary to make the hospital's base-period experience comparable to costs incurred during the transition period. Also, there are potential issues concerning the calculation of the costs on a per discharge basis and the adjustment for the hospital's 1981 case-mix index.

As we noted in the preamble to the final rule published on January 3, 1984 (49 FR 234, 259), the starting point for resolving any of the issues noted above is the legal requirement that the prospective payment rates, including the hospital-specific rate, must be fixed in advance of the period to which the rates apply. This requirement necessarily means that, insofar as the rates depend on particular facts, we must use the best data and information available at the time that the rates are established. Moreover, insofar as the facts depend on an interpretation of the law (for example, whether particular costs are allowable or how they are allocated or apportioned), we must make a good faith attempt to apply the law and regulations as they are understood at that time.

In considering the provisions of section 1886(d) of the Act, as enacted by Pub. L. 98–21 on April 20, 1983, Congress recognized that prospective rates for the transition period would have to be established rapidly in order to bring some 5,500 hospitals into the system at the beginning of their costs reporting periods beginning during FY 1984, which began on October 1, 1983. As the Conference Committee Report stated, "Since the hospital-specific portion of the rate must be determined in advance of the hospital's first fiscal year under the system, the managers expect that *the Secretary will use the best data available at that time* to determine operating costs for the purposes of the phase-in." (H.R. Rep. No. 47, 98th Cong., 1st Sess. 182 (1983). (Emphasis added.)

Prior to the time that a hospital became subject to the prospective payment system, the hospital submitted its base-period costs report to its intermediary and the cost report was audited to disallow costs not permitted under the Medicare statute and regulations. Under the prospective payment system, the intermediary was required to determine its best estimate of the hospital's base-period costs and modifications thereto and to advise the hospital of its determination. Hospitals were given three weeks to submit additional information or request revisions in response to the intermediaries' preliminary estimates, and subsequently 90 days to correct mathematical mistakes. However, in the end, the final rate was determined by the intermediary using its best judgment based on the available information.

Once a hospital has begun operating under the prospective payment system, the intermediary may not revise its estimate or modification except in the following limited circumstances: Where a hospital entering the prospective payment system on or before November 15, 1983 neglected to request certain modifications to correct mathematical errors detected within 90 days of the estimate's issuance; to recognize prospectively the results of successful appeals with respect to settlement of the base-year costs by hospital's; and to exclude retroactively certain fraudulently claimed costs.

The effect of appeals on the hospital-specific rate is a potentially confusing subject because of the two methods available for review. A first method of review (indirect appeal) results when the hospital appeals issues related to its base-period cost report. Since the

hospital-specific rate is derived from data in the base-period cost report, revisions of base-period costs have potential implications for the hospital-specific rate. Because a hospital pursuing an indirect appeal is not seeking review of the hospital-specific rate itself and might not seek this review, success does not invalidate the rate. Indirect appeals are wholly separate from challenges to the validity of the hospital-specific rate that involve issues arising from errors in the determination of the rate.

We might have taken the position that the hospital-specific rate, once properly set, would be effective for the entire four-year transition period without the possibility of adjustment based on new information. In light of the transitional and approximate nature of the hospital-specific rate, this would have been a reasonable procedure. Nevertheless, as noted above, current regulations authorize a prospective revision of the hospital-specific rate if additional base-period operating costs are recognized after appeal of the base-period NPR. This prospective adjustment of the rate is made automatically even though the hospital has not challenged the rate or obtained a ruling that the rate is improper.

Moreover, since discharge data were included in the base-period cost report and are adjustable by the intermediary, we believe that more accurate information pertaining to discharge data should be treated in a manner similar to base-period cost data. Accordingly, we propose to revise the regulations to allow prospective adjustment of the hospital-specific rate to account for more accurate base-period discharge information.

A second method of review of the hospital-specific rates (direct appeal) is available, but as explicitly stated in § 412.72(b), the scope of review is limited to whether the intermediary followed the provisions of §§ 412.71 and 412.72. Since the statute requires a prospectively-determined payment rate, § 412.72(b)(3) provides that an appeal of the rate may not be based on data, information, or arguments that were not presented to the intermediary at the time of the intermediary's estimation of the hospital-specific rate. An intermediary's estimate or modifications will be considered legally erroneous, and thus subject to revision, only if the intermediary failed to follow the required calculation procedures, including the requirement to use the best data available. With respect to this latter requirement, an intermediary's estimate or modifications may be revised only if unreasonable and clearly erroneous in light of the data available at the time they were made.

The proposed regulations clarify this policy by specifying that revisions of the hospital-specific rate that meet the criteria of the scope of review, that is, issues involving best data available and clearly erroneous actions, will result in retroactive revision of the rate. These provisions regarding adjustment of the hospital-specific rate would extend to actions that result in either upward or downward changes in the rate.

The distinction between a challenge to costs allowable in the base period itself and a challenge to the hospital-specific rate is critical, since the standard of review differs greatly between the two issues. If a hospital wants to challenge the rate itself, and by so doing obtain retroactive releif in the event of success, it must pursue a direct appeal. In the case of a direct appeal, the current regulations address certain aspects of what constitutes legal error in setting the hospital-specific rate.

The only proper issue on a direct appeal of the hospital-specific rate is whether the intermediary in fact followed the required procedures in establishing the rate, including the requirement to use the best data available. The administrative review process and the courts can examine that issue in each direct appeal and determine whether the intermediaries acted reasonably under the circumstances of each case. If a disallowance was based on a legal interpretation later held incorrect by the courts, the validity of the rates would not be affected if the intermediaries made a good faith attempt to act in accordance with the law and regulations as they were understood when the rates were established. If the rate was unlawfully established (that is, the intermediary acted ureasonably in estimating allowable base-period costs or making modifications to those costs), fully retroactive relief would be granted.

On the other hand, when a hospital successfully appeals disallowances of its base-period costs (that is, in an indirect appeal), the increased costs are recognized in the hospital-specific rate only for subsequent reporting periods under the prospective payment system. If a hospital desires retroactive relief, it must seek that in a direct appeal, where the standard of review is substantially different. A prospective system requires use of data available at the time that rates are established, and the mere fact that the data later prove to have been incorrect does not by itself invalidate the rate.

D. Proposed Clarifications and Changes

The current regulations concerning the calculation of the hospital-specific rate (that is, §§ 412.71 and 412.72) are potentially confusing because they do not clearly separate issues relating to estimation of base-period costs, modifications to those costs prior to the beginning of the prospective payment system, and subsequent adjustments based on later events such as successful appeals. Also, the provisions relating to administrative and judicial review of the prospective payment rate are currently located in a section related to the hospital-specific rate, although these provisions are clearly intended to relate to all issues on appeal.

Therefore, we are proposing to reorganize the provisions in §§ 412.71 and 412.72(a) to make our intent clear. We also propose to redesignate § 412.73 (Determination of the hospital-specific rate) as § 412.72 and § 412.72(a) as § 412.73 so that the provisions concerning determination of the hospital-specific rate would precede the provisions relating to revising that rate. In addition, we would move the provisions on administrative and judicial review now set forth in § 412.72(b) to a new § 412.128 and clarify them as well. Also, we would eliminate § 412.76, which duplicates the provisions of current § 412.72(a)(5) (which would be redesignated as § 412.73(h)). The following table illustrates the proposed redesignation:

Current	*New*
412.71(a)	412.71(b)
412.71(b)	412.71(c)(1)
412.71(c)(1)	412.71(c)(2)
412.71(c)(2)	412.71(c)(3)
412.71(d)	412.72(e)
412.72(a)	412.73(a)
412.72(a)(1)(ii)(A)	412.73(b)
412.72(a)(1)	412.73(c)
412.72(a)(2)	412.73(d)
412.72(a)(3)	412.73(g)
412.72(a)(4)	412.73(e)
412.72(a)(5)	412.73(h)
412.72(b)(1)	412.128(a)
412.72(b)(2)	412.128(b)(1)
412.72(b)(3)	412.128(b)(2)
412.73	412.72
412.76	deleted

We believe that the regulations addressing adjustment of the hospital-specific rate should result in equitable effects for both the industry and the government. Consequently, we are proposing that both retroactive and prospective adjustments of the hospital-specific rate may result in either increases or decreases in payments. Similar criteria would be applied in determining the effective date of the adjustment regardless of which party benefits from the rate revision.

III. Regulatory Impact Statement

These proposed regulations would clarify and make minor revisions in the regulations governing administrative and judicial review of payment amounts under the prospective payment system. Consequently, we have determined that there is no need for the analysis required by Executive Order 12291 for rules that have a significant impact on the economy. In addition, we certify that an analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 604) because the rule changes would not have a significant economic impact on a substantial number of small entitles. Also, we certify that an analysis is not required under section 1102(b) of the Act because this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

IV. Other Required Information

A. Paperwork Burden

Section 412.71 contains information collection requirements, which were previously approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3504 and given the approval number of 0938-0288. However, that approval expired on June 30, 1984. Therefore, as required, we will submit a copy of this proposed rule to OMB for its review of these information collection requirements. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the "ADDRESS" section of this preamble.

B. Public Comment

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specificed in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 412 would be amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1302a-1, 1395hh, and 1395ww).

B. Subpart E is amended as follows:

1. The table of contents for Subpart E is amended by revising the titles of §§ 412.71, 412.72, and 412.73, and by removing the title of § 412.76 to read as follows:

* * * * *

Subpart E—Determination of Transition Period Payment Rates

Sec.

* * * * *

412.71 Determination of modified base-period inpatient operating costs.

412.72 Determination of the hospital-specific rate.

412.73 Permissible adjustments of the hospital-specific rate.

* * * * *

2. Section 412.71 is revised to read as follows:

§ 412.71 Determination of modified base-period inpatient operating costs.

(a) *General rule.* The hospital-specific portion of the prospective payment rate is derived from inpatient operating costs that are incurred during a base period and modified for use under the prospective payment system. The modified base-period inpatient operating costs are determined as set forth in this section.

(b) *Estimate of base-period costs.* (1) Except for new hospitals, whose transition period payments are determined under § 412.74, the intermediary estimates each hospital's Medicare Part A allowable inpatient operating costs, as described in § 412.2(c), for the 12-month or longer cost reporting period ending on or after September 30, 1982 and before September 30, 1983.

(2) If the hospital's last cost reporting period ending before September 30, 1983 is for less than 12 months, the base period is recent 12-month or longer cost reporting period ending before such short reporting period, with an appropriate adjustment for inflation.

(c) *Modifications to base-period costs.* (1) Prior to determinig the hospital-specific rate under § 412.72, the intermediary modifies the hospital's allowable base-period inpatient operating costs to make the hospital's base-period experience comparable to the types of costs expected to be incurred during the prospective payment system transition period. The intermediary includes malpractice insurance costs and excludes the following:

(i) Nursing differential costs.[1]

(ii) Medical education costs as described in § 413.85 of this chapter.

(iii) Capital-related costs as described in § 413.130 of this chapter.

(iv) Kidney acquisition costs incurred by hospitals approved as renal transplantation centers as described in § 412.100. Kidney acquisition costs in the base period are determined by multiplying the hospital's average kidney acquisition cost per kidney times the number of kidney transplants performed by the hospital and covered by Medicare Part A during the base period.

(v) Higher costs that were incurred for purposes of increasing base-period costs.

(vi) One-time nonrecurring higher costs or revenue offsets that have the effect of distorting base-period costs as an appropriate basis for computing the hospital-specific rate.

(vii) Higher costs that result from changes in hospital accounting principles initiated in the base period.

(viii) For cost reporting periods beginning on or after October 1, 1984 through any part of a cost reporting period occurring before January 1, 1989, the cost of qualified nonphysician anesthetists' services as described in § 412.113(c).

(2) Before the date it becomes subject to the prospective payment system, a hospital may request the intermediary to further modify its estimated base-period costs to take into account the following:

(i) Services paid for under Medicare Part B during the hospital's base period that will be paid for under prospective payments. The base-period costs may be increased to include estimated payments for certain services previously billed as physicians' services before the effective date of § 405.550(b) of this chapter (October 1, 1983), and estimated payments for nonphysicians' services that were not furnished either directly or under arrangements before October 1, 1983 (the effective date of § 405.310(m) of this chapter), but may not include the costs of anesthetists' services for which a physician employer continues to bill under § 405.553(b)(4) of this chapter.

(ii) The payment of FICA taxes during cost reporting period subject to the prospective payment system, if the hospital had not paid such taxes for all its employees during its base period and is required to participate effective January 1, 1984.

[1] As formerly provided in § 405.430, which was removed from the CFR on September 1, 1983 (48 FR 39811).

(3) If a hospital requests that its base-period costs be modified under paragraph (c)(2) of this section, it must timely provide the intermediary with sufficient documentation to justify the modification and adequate data to compute the modified costs. The intermediary decides whether to use part or all of the data on the basis of audit, survey, and other information available.

3. Section 412.72 is revised to read as follows:

§ 412.72 Determination of the hospital-specific rate.

(a) *Costs on a per discharge basis.* The intermediary determines the hospital's modified base-period operating cost per discharge by dividing the total modified operating costs by the number of discharges in the base period.

(b) *Case-mix adjustment.* The intermediary divides the modified base-period cost per discharge by the hospital's 1981 case-mix index. If the hospital's case-mix index is statistically unreliable (as determined by HCFA), the hospital's base-period costs are divided by the lower of the following:

(1) The hospital's estimated case-mix index.

(2) The average case-mix index for the appropriate classifications of all hospitals subject to cost limits established under § 413.30 of this chapter for cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983.

(c) *Updating base-period costs*—(1) *For Federal fiscal year 1984.* The case-mix adjusted base-period cost per discharge is updated by the applicable updating factor, as adjusted for budget neutrality.

(2) *For Federal fiscal year 1985.* The amount determined under paragraph (c)(1) of this section is updated by the applicable updating factor, as adjusted for budget neutrality.

(3) *For Federal fiscal year 1986.* (i) The amount determined under paragraph (c)(2) of this section is updated by—

(A) Zero percent for the first seven months of the hosptial's cost reporting period; and

(B) One-half of one percent for the remaining five months of the hospital's cost reporting period.

(ii) For purposes of determining the updated base-period cost reporting periods beginning in Federal fiscal year 1987 (that is, on or after Ocober 1, 1986 and before October 1, 1987), the update factor for the previous cost reporting period is deemed to have been one-half of one percent.

(4) *For Federal fiscal year 1987.* The amount determined under paragraph (c)(3)(ii) of this section is updated by 1.15 percent.

(5) *For Federal fiscal year 1988 and following.* For purposes of determining the prospective payment rates for sole community hospitals under § 412.92(d), the base-period cost per discharge continues to be updated each Federal fiscal year as follows:

(i) For Federal fiscal year 1988, the update factor is the percentage increase in the market basket index (as described in § 413.40(c)(3)(ii)) minus 2.0 percentage points.

(ii) For Federal fiscal years 1989 and following, the update factor is determined using the methodology set forth in § 412.63(g)(1) through (g)(3).

(d) *Budget neutrality—(1) Federal fiscal year 1984.* For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984, HCFA adjusts the target rate percentage used under paragraph (c)(1) of this section. This adjustment is based on a factor actuarially estimated to ensure that the estimated amount of aggregate Medicare payments based on the hospital-specific portion of the transition payment rates is neither greater nor less than 75 percent of the amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1984 under title XVIII of the Act as in effect on April 19, 1983 (the day before enactment of Pub. L. 98–21).

(2) *Federal fiscal year 1985.* For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, HCFA adjusts target rate percentage used under paragraph (c)(2) of this section. This adjustment is based on a factor actuarially estimated to ensure that the estimated amount of aggregate Medicare payment based on the hospital-specific portion of the transition payment rates is neither greater nor less than 50 percent of the amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1985 under title XVIII of the Act as in effect on April 19, 1983 (the day before enactment of Pub. L. 98–21).

(e) *Intermediary's determination.* The intermediary uses the best data available at the time in estimating each hospital's base-period cost, the modifications of those costs authorized by §412.71, and the number of base-period discharges. The intermediary's determination of the hospital-specific rate is final and may not be changed after the first day of the first cost reporting period beginning on or after October 1, 1983, except as provided in § 412.73.

(f) *DRG adjustment.* The applicable hospital-specific cost per discharge is multiplied by the appropriate DRG weighting factor to determine the hospital-specific base payment amount (target amount) for a particular covered discharge.

4. Section 412.73 is revised to read as follows:

§ 412.73 Permissible adjustments of the hospital-specific rate.

(a) *General rule.* In order to preserve its prospective nature, the hospital-specific rate, as determined in accordance with § 412.72, may be adjusted only under the circumstances and at the times specified in this section.

(b) *Prior adjustments.* The intermediary may adjust the hospital-specific rate for any reason before the date the hospital becomes subject to the prospective payment system.

(c) *Inadvertent omissions.* (1) A hospital that becomes subject to the prospective payment system during the period on or after October 1, 1983 and before November 16, 1983 has through November 15, 1983 to request its intermediary to reestimate its modified base-period costs to take into account inadvertent omissions in its previous submissions to the intermediary pertaining to capital-related costs, medical education costs, and the modifications authorized under § 412.71(c)(2).

(2) The intermediary must notify the hospital of any change to its hospital-specific rate as a result of the hospital's request within 30 days of receipt of the additional data.

(3) Any change to modified base-period costs made under this paragraph is made effective retroactively, beginning with the first day of the hospital's first cost reporting period under the prospective payment system.

(d) *Correction of mathematic errors in calculations.* (1) The hospital must report mathematical errors in calculations to the intermediary within 90 days of the intermediary's notification to the hospital of the hospital's initial hospital-specific rate.

(2) The intermediary may also identify mathematic errors and initiate their correction during this period.

(3) The intermediary either makes an appropriate adjustment or notifies the hospital that no adjustment is warranted within 30 days of receipt of the hospital's report of an error.

(4) Corrections of timely-identified errors in calculations are effective with the first day of the hospital's first cost reporting period under the prospective payment system.

(e) *Successful appeal of the hospital-specific rate.* (1) The intermediary must adjust the hospital-specific rate to take into account a successful appeal under § 412.128.

(2) The adjustment is effective retroactively to the date of the intermediary's determination of the hospital-specific rate.

(f) *Correction of errors in the hospital-specific rate.* (1) The intermediary must initiate adjustments in the hospital-specific rate to correct for errors in the calculation based on information that was presented to the intermediary at the time the rate was set.

(2) The standard for intermediary review of the hospital-specific rate is the same as that for hospital appeals under § 412.128.

(3) The adjustment of the hospital-specific rate under this section is effective retroactively to the date of the intermediary's determination of the hospital-specific rate.

(g) *Prospective effect of the adjustments in allowable base-period costs—(1) Review of base-period notice of amount of program reimbursement.* The intermediary must adjust the hospital-specific rate to take into account any changes (both upward and downward) in allowable costs for the hospital's base period as the result of any of the following:

(i) A reopening and revision of the hospital's base-period notice of amount of program reimbursement under §§ 405.1885 through 405.1889 of this chapter.

(ii) A prehearing order or finding issued during the provider payment appeals process by the appropriate reviewing authority under § 405.1821 or § 405.1853 of this chapter that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(iii) An affirmation, modification, or reversal of a Provider Reimbursement Review Board decision by the Administrator of HCFA under § 405.1875 of this chapter that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(iv) An administrative or judicial review decision under §§ 405.1831, 405.1871, or 405.1877 of this chapter that is final and no longer subject to review under applicable law or regulations by a higher reviewing authority, and that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(2) *Accounting for a revised number of discharges.* The intermediary must adjust the hospital-specific rate to take into account any revision in the number of discharges reported for the base period.

(3) *Adjustments of the hospital-specific rate.* Adjustments of the hospital-specific rate authorized under this paragraph (g)—

(i) Are effective with the first day of the hospital's first cost reporting period beginning on or after the date of the revision, order, finding, review decision, or granting of the exception, exemption, or adjustment; and

(ii) May not be used to recalculate the hospital-specific rate as determined for cost reporting periods beginning before the date of the revision, order, finding, review decision, or granting of the exception, exemption, or adjustment.

(4) *Retroactive adjustments.* The prospective adjustments to the hospital-specific rate authorized by this paragraph (g) neither limit nor support a retroactive adjustment under paragraph (e) of this section.

(h) *Unlawfully claimed payments.* The intermediary may adjust the hospital-specific rate to exclude payments that were unlawfully claimed as determined as a result of criminal conviction, imposition of a civil judgment under the False Claims Act (31 U.S.C. 3729–3731), or a proceeding for a civil money penalty, assessment, or exclusion from the Medicare program. In addition to adjusting the hospital-specific rate, HCFA recovers both the excess costs reimbursed for the base period and the additional amounts paid due to the inappropriate increase of the hospital-specific rate.

§ 412.76 [Removed]

5. Section 412.76 is removed.

C. Subpart H is amended as follows:

1. The table of contents for Subpart H is amended by adding the title of a new § 412.128 to read as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

Sec.

* * * * *

412.128 Administrative and judicial review of payment amounts.

* * * * *

2. A new § 412.128 is added to read as follows:

§ 412.128 Administrative and judicial review of payment amounts.

(a) *General rule.* To the extent authorized under section 1878 of the Act and Part 405, Subpart R of this chapter, a hospital may obtain administrative and judicial review of the amount of its payments under the prospective payment system. Review is available to a hospital only upon receipt of its notice of amount of program reimbursement following the close of the reporting period under the prospective payment system about which the hospital is dissatisfied with respect the amount of payment received. (Sections 405.1803 and 405.1807 of this chapter set forth the rules for intermediary determinations and notices of amounts of program reimbursement and the effect of those determinations.)

(b) *Standard of review of payment rates—(1) Bases for invalidating rates.* Consistently with the requirement for prospective rates, a federal or hospital-specific rate may be determined to be invalid in administrative or judicial review only to the extent that—(i) The proper procedure for calculating the rate was not followed;

(ii) A determination was unreasonable and clearly erroneous in light of the data or information available at the time that the determination was made; or

(iii) The intermediary applied legal principles that could not reasonably have been regarded as correct in light of the state of the law and applicable regulations at the time that the determination was made.

(2) *Issues not to be considered.* Issues based on data, information, or arguments that were not presented to the intermediary or to HCFA (with respect to aspects of the rates decided by HCFA) at the time that the rates were established cannot serve as a basis of invalidating the rates.

(3) *Remedy.* To the extent that the payment amounts are determined to be improper as specified under paragraph (b)(1) of this section, fully retroactive relief for the reporting period subject to the administrative or judicial review will be granted.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: February 11, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 21, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–13227 Filed 6–10–88; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 88-57, RM-5643]

Review of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network; and Petition for Modification of the Commission's Rules filed by the Electronic Industries Association

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time for reply comments.

SUMMARY: The Commission partially granted a request for extension of time of the reply comment period in this proceeding concerning inside wiring connections to the telephone network. This action was taken as a result of a motion filed by the Telecommunications Industry Association (TIA).

DATES: The date for filing reply comments in this proceeding was extended to May 23, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick J. Donovan, Domestic Services Branch, Common Carrier Bureau, telephone (202) 634-1832.

SUPPLEMENTARY INFORMATION: This is a summary of a Motion for Extension of Time for filing reply comments to the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 88-57 and RM-5643 released March 8, 1988. A complete copy of that NPRM was published at 3 FCC Rcd 1120 (1988), and a summary was published in the Federal Register on March 28, 1988 [53 FR 9952].

Summary of Motion for Extension of Time:

The NPRM required that comments by interested parties be received at the Commission on or before April 29, and that reply comments be received on or before May 16, 1988. TIA requested an extension of time until June 13, 1988 or later for the filing of reply comments. By Order of the Common Carrier Bureau released May 12, 1988, an extension of one week (rather than the four weeks or more requested by TIA) was granted to promote complete responsive comments. Accordingly, parties were given until May 23, 1988 to file reply comments.

Gerald P. Vaughan,

Deputy Chief (Operations), Common Carrier Bureau, Federal Communications Commission.

[FR Doc. 88-13249 Filed 6-10-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-140; FCC 88-120]

FM Translator Service

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This *Notice of Inquiry (Notice)* initiates a study of the role of FM translators in the provision of broadcast radio service. The purpose of this action is to examine and, where necessary or appropriate, to revise our policy regarding the authorization and operation of FM translators consistent with our overall FM allocation plan. This *Notice* is issued in response to petitions for rule making filed by the National Association of Broadcasters (NAB) and several other parties that raise issues addressing FM translator matters.

DATES: Comments due August 15, 1988; replies due September 15, 1988.

DATES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission *Notice of Inquiry* adopted March 24, 1988, and released June 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Notice of Inquiry

1. The Commission initiated this inquiry in response to petitions for rule making filed by the National Association of Broadcasters (NAB) and several other parties that raise issues addressing FM translator matters. In its petition, the NAB requests further restrictions on FM translators to prevent their use as a means to expand the service areas of primary FM stations and tightened technical rules to prevent interference from translators to full-service stations. The other petitioning parties seek various forms of expansion of the current translator authority, including program origination authority.

2. The *Notice* indicates that the Commission's objective of this proceeding is to examine and, where necessary or appropriate, to revise its FM translator policies to ensure that they are consistent with its overall FM allocations plan. At the outset of this proceeding, the Commission emphasizes that it does not intend to change its longstanding view that the proper role of FM translators is to provide supplementary service to unserved and underserved areas, and to areas unable to receive satisfactory reception within the normal predicted service areas of primary stations. In the *Notice* the Commission states that it is aware of the concerns expressed by NAB and its supporters that translators may have an adverse competitive and technical impact on the service provided by full-service FM stations and the possible need to strengthen the existing limitations on translator operation. It also notes that the requests of the other petitioners to increase use of FM translator facilities to provide new service to underserved areas and to serve the interests of specialized audiences may be generally consistent with the goal of maximizing the number and diversity of mass media outlets. Thus, the *Notice* asks for public comment on all matters that may be relevant to the Commission's general FM translator policies and invites specific proposals for rules and regulations to implement any changes in these policies.

3. In addition, the Commission imposed a general freeze on the acceptance of application for new FM translators or major changes to existing FM translator stations pending final resolution of this proceeding. The freeze will not apply to applications filed prior to the adoption of this *Notice*. Such applications will continue to be processed in accordance with normal procedures. The Commission also is providing an exemption from the general freeze for new noncommercial, educational FM translators seeking assignment to the reserved frequency band in order to permit the implementation of the noncommercial signal delivery rule change adopted March 24, 1988, in the *Report and Order* in MM Docket 86-112, FCC 88-125.

4. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates specified in the Preamble.

All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

5. This *Notice of Inquiry* is issued pursuant to authority contained in sections 4(i) and 303 of the

Communications Act of 1934, as amended.

6. In addition *It Is Ordered* that the petition for waiver of § 74.1231 of these rules for translator station K285CS filed by John Davidson Craver *Is Denied* and that the petition for rule making of John La Tour *Is Denied* to the extent indicated herein. Further, *It is Ordered* that effective immediately as of the close of Commission business on the day of adoption of this *Notice of Inquiry*, and until further notice, the Commission *Will Not Accept* applications for new FM translator stations, except as provided herein above. Any translator application received by the Commission that is not acceptable due to this freeze will be returned, along with any accompanying filing fee, to the applicant.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88-13250 Filed 6-10-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket 87-121]

Amendment To Permit Short-Spaced FM Station Assignments by Using Directional Antennas

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making; extension of comment period.

SUMMARY: This action, requested by Greater Media, Inc., extends the comment and reply comment periods for the *Notice of Proposed Rule Making* in MM Docket 87-121. That Notice (53 FR 12779, April 19, 1988) proposes rules that would permit the use of short-spaced stations, and related matters.

DATES: Comments are due August 5, 1988 and replies due September 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: .

Order Granting Motion For Extension of Time For Filing Comments

Adopted: May 26, 1988.
Released: May 27, 1988.
By the Chief, Mass Media Bureau.

In the matter of amendment of Part 73 of the Commission's Rules to Permit Short-spaced FM Station assignments by using Directional Antennas, MM Docket No. 87-121.

1. On March 30, 1988, the Commission released a *Notice of Proposed Rule Making* ("*Notice*") in the captioned matter.[1] In the *Notice*, the Commission propóses amending the rules to permit use of short-spaced FM transmitting antenna sites in certain circumstances, use of FM directional antennas by short-spaced stations, and related matters. Comments on the proposal were to be filed on or before May 27, 1988, with replies on or before June 27, 1988. On May 10, 1988, Greater Media, Inc. ("Greater Media") filed a motion requesting that the comment period be extended to August 5, 1988.

2. In its motion, Greater Media appears concerned that the *Notice* expands the scope of this proceeding beyond what was originally contemplated in the initial *Notice of Inquiry* in this proceeding. Specifically, it believes that the proposals in the *Notice* seem to presage a transition to a demand-based allocation sytem which is premised upon contour protection, rather than mileage separations and a Table of Allotments. As evidence of this intention, it alleges that that the *Notices* proposes to introduce the use of directional antennas in the allocation process, to allow short-spaced stations to accept interference, and to reduce the contour protection standards applicable to Class B stations. In view of the complex nature of these purported proposals, Greater Media believes an extension in the comment period is necessry to allow it and other interested members of the industry to complete their review and formulate a satisfactory response.

3. While we agree with Greater Media's assessment of the complexities of the technical issues under study, we believe that Greater Media has overstated the intent of this proceeding regarding the Commission's fundamental channel allotment policy. Nonetheless, in light of the depth and complexity of the proposed interference protection standards, directional antenna issues, and other related technical matters raised in the *Notice*, we believe that additional time for filing comments is warranted, and that the public interest would be served by a grant of Greater Media's request.

4. Accordingly, *It Is Ordered* That the Motion for Extension of Comment and Reply Comment Dates filed by Greater Media, Inc. *Is Granted* and that the dates for filing comments and reply comments are *Extended* to August 5, 1988 and September 5, 1988, respectively.

5. This action is taken pursuant to authority found in sections 4(d) and 303(r) of the Communications Act of 1934, as amended and §§ 0.204(b), 0.283, 1.46 and 1.45 of the Commission's Rules.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-13251 Filed 6-10-88; 8:45 am]

BILLING CODE 6712-01-M

[1] *See* FCC 88-73, 3 FCC Rcd 1820 (1988).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 80621-8121]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Preliminary Change in Total Allowable Catch and Bag Limits for King and Spanish Mackerel

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce issues a notice of preliminary change in the total allowable catch (TAC), allocations, and quotas for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel and in the bag limits for the Atlantic group of king mackerel and the Gulf group of Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice proposes (1) for the Gulf migratory group of king mackerel, increases in TAC, allocations, and quotas; (2) for the Gulf magratory group of Spanish mackerel, increases in TAC, allocations, and bag limits; (3) for the Atlantic migratory group of king mackerel, reductions in TAC and allocations, and in the bag limit applicable to the southern area of the exclusive economic zone (EEZ) off Florida; and (4) for the Atlantic migratory group of Spanish mackerel, increases in TAC and allocations. The intended effects are to protect the mackerels while still allowing catch by the important recreational and commercial fisheries that are dependent on these species.

DATE: Writen comments must be received on or before June 23, 1988.

ADDRESS: Comments may be mailed to Mark F. Godcharles, Southeast Region,

National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FUTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642. Amendment 1 to the FMP was implemented September 22, 1985 (50 FR 34843, August 28, 1985). Amendment 2 was implemented June 30, 1987 (52 FR 23836, June 25, 1987).

In accordance with § 642.27, the Councils appointed an assessment group (Group) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on its 1988 report and recommendations, advice from the Mackerel Advisory Panel and the Scientific and Statistical Committee, and public input, the Councils recommended to the Director, Southeast Region, NMFS, changes to TACs, allocations, quotas, and bag limits.

Specifically, the Councils recommended that, effective with the fishing year beginning July 1, 1988, annual TACs be set at 3.4 million pounts (m. lbs.) for the Gulf magratory group of king mackerel and 5.0 m. lbs. for the Gulf magratory group of Spanish mackerel. The Councils further recommended that, effective for the fishing year which began April 1, 1988, annual TACs be set at 7.0 m. lbs. for the Atlantic migratory group of king mackerel and 4.0 m. lbs. for the Atlantic migratory group of Spanish mackerel. All TACs are within the range of acceptable biological catch determined by the Group.

Under the provisions of the FMP, the recreational and commercial fisheries are each allocated a fixed percentage of each TAC and the Gulf king mackerel commercial allocation is divided into quotas for eastern and western zones. Under the fixed percentages and the proposed TACs, these allocations and quotas would be as follows:

Species		(m. lbs.)	
Gulf King Mackerel—TAC	3.4		
Recreational allocation (68%)		2.31	
Commercial allocation (32%)		1.09	
Eastern zone (69% of 1.09)			0.75
Western zone (31% of 1.09)			0.34
Gulf Spanish Mackerel—TAC	5.0		
Recreational allocation (43%)		2.15	
Commercial allocation (57%)		2.85	
Atlantic King Mackerel—TAC	7.0		
Recreational allocation (62.9%)		4.40	
Commercial allocation (37.1%)		2.60	
Atlantic Spanish Mackerel—TAC	4.0		
Recreational allocation (24%)		0.96	
Commercial allocation (76%)		3.04	

The recreational fishery is regulated by both allocations and bag limits. The Councils recommended no changes in the bag limits applicable to the Gulf group of king mackerel and the Atlantic group of Spanish mackerel. For the Atlantic group of king mackerel, the Councils recommended no change in the three-fish bag limit in the northern area (the EEZ off North Carolina, South Carolina, and Georgia), but recommended a reduction in the bag limit in the southern area (the EEZ off Florida) to two fish per person per trip. For the Gulf group of Spanish mackerel, the Councils recommended increases in the bag limits in the eastern area (the EEZ off FLorida) to four fish per person per trip and in the western area (the EEZ off Alabama, Mississippi, Louisiana, and Texas) to ten fish per person per trip.

The recommended reduction of the bag limit from three to two Atlantic group king mackerel in the southern area is intended to decrease recreational catch in response to the lower TAC and maintain a recreational harvest throughout the season. A substantial portion of the allocation is historically taken in this high-population area where generally favorable fishing conditions allow increased fishing effort. The two-fish bag limit is also consistent with Florida's regulations. The recovering stock of Spanish mackerel in the Gulf allows an increase in the TAC and allocations. A bag limit increase to four fish is recommended in the eastern area where 87 percent of the recreational allocation was taken during the 1986–1987 fishing year. This bag limit is consistent with Florida's regulations. A bag limit increase to ten fish is recommended in the western area where fishing effort and availability of fish are lower and is compatible with recently implemented regulations in Alabama.

A minority report has been submitted by ten members of the Councils requesting that the Secretary reject the Gulf Spanish mackerel bag limits. The report contends that the variable bag limit of ten for Alabama through Texas and four for Florida is not supported by the record, that it fails to manage the stock as a unit throughout its range in violation of National Standard 3, and that it is not fair and equitable as required by National Standard 4. All the issues raised by the minority report and any others raised during the comment period will be considered prior to publication of a notice of final changes.

Other Matters

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

For the reasons set forth in the preamble, 50 CFR Part 642 is proposed to be amended as follows:

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(1), introductory text	0.7	1.09
(a)(1)(i)	0.46	0.75
(a)(1)(ii)	0.22	0.34
(a)(2), first sentence	3.59	2.60
(b)(1)	1.5	2.31
(b)(2)	6.09	4.40
(c)(1)	1.42c	2.85
(c)(2)	2.36	3.04
(d)(1)	1.08	2.15
(d)(2)	0.74	0.96

3. In § 642.28, paragraphs (a)(2) and (3) are revised, paragraph (a)(4)(iii) is removed, and a new paragraph (a)(5) is added to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(2) *King mackerel Atlantic migratory group.* (i) Possessing two king mackerel per person per trip from the southern area.

(ii) Possessing three king mackerel per person per trip from the northern area.

(3) *Spanish mackerel Gulf migratory group.* (i) Possessing four Spanish mackerel per person per trip from the eastern area.

(ii) Possessing ten Spanish mackerel per person per trip from the western area.

* * * * *

(5) *Areas.* (i) For the purposes of paragraphs (a)(2) and (4) of this section, the boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ.

(ii) For the purposes of paragraph (a)(3) of this section, the boundary between the eastern and western areas (identical to the eastern and western zones in the commercial fishery) is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ.

* * * * *

[FR Doc. 88-13261 Filed 6-8-88; 4:53 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 113
Monday, June 13, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMITTEE ON FEDERAL PAY

Meeting

The Advisory Committee on Federal Pay announces that public discussions of the adjustment in Federal white-collar employee pay for October 1988 have been scheduled for Wednesday, July 27, in Suite 600, 1730 K Street NW. They will start at 1:30 p.m.

These discussions are intended to give organizations representing Federal employees or any interested government employees an opportunity to express their views regarding the Pay Agent's proposals. Those wishing to discuss the Agent's proposals with the Committee should notify the Committee by July 25. The telephone number is 653–6193. Written comments should also reach the Committee by July 25—Suite 205, 1730 K Street NW., Washington, DC 20006. Both written submissions and requests for an opportunity to discuss the issues should include a telephone number where the organization or official can be reached.

The Advisory Committee on Federal Pay, established as an independent agency § 5306 of Title 5, United States Code (Pub. L. 91–656, the Federal Pay Comparability Act), is charged with assisting the President in carrying out the policies of § 5301 of Title 5, United States Code. The Committee's fundamental obligation is to present the President with an independent recommendation on Federal pay for the 1.4 million white-collar workers and other employees whose pay is linked to the General Schedule. Section 5306 of Title 5 requires the Committee to make findings and recommendations to the President on the annual adjustment in Federal pay after considering the written views of employee organizations, the President's Agent, other officials of the Government of the United States, and such experts as the Committee may consult.

Lucretia Dewey Tanner,
Executive Director.

[FR Doc. 88–13046 Filed 6–10–88; 8:45 am]
BILLING CODE 6820–43–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88–065]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit to Field Test Genetically Engineered Insect Resistant Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Sandoz Crop Protection Corporation to allow the field testing in the State of North Carolina of genetically engineered tobacco plants, designed to be resistant to lepidopteran insects. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James L. White, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7769. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7750, or write her at this same address. The environmental assessment should be requested under accession number 88–036–01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 228992—22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Sandoz Crop Protection Corporation of Des Plaines, Illinois, has submitted an application for a permit for release into the environment of genetically engineered tobacco plants that are designed to be resistant to lepidopteran insects. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tobacco plants under the conditions described in the Sandoz application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant

impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Sandoz Crop Protection Corporation, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for insect resistance has been inserted into the tobacco chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field test, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is located at a sufficient distance from any sexually compatible plants with which the experimental tobacco plants could cross-pollinate.

2. Neither the insect resistant gene itself, nor its gene product confers on tobacco any plant pest characteristics.

3. The microorganism from which the insect resistant gene was isolated is not a plant pest and is widely distributed in the environment as a soil inhabitant.

4. The vector used to transfer the insect resistance gene to tobacco plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to susceptible plants.

5. The vector agent, the bacterum that was used to deliver the vector DNA and the insect resistant gene into the plant cells, has been shown to be eliminated and no longer associated with the transformed tobacco plants.

6. Horizontal movement of the introduced gene is not possible. The vector acts by delivering and inserting the gene into the tobacco genome (i.e., chromosomal DNA). The vector does not survive in the transformed plant. No horizontal movement mechanism is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organisms.

7. The toxic polypeptide produced by the insect resistant gene is called delta-endotoxin. Upon ingestion, the toxin kills only lepidopteran insects. Delta-endotoxin is not toxic to most other insects, wild or domestic birds, fish or mammals.

8. The field test site is 73 feet wide by 200 feet long and is physically isolated from many species of wild plants and animals by irrigation canals and a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 8th day of June, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–13225 Filed 6–10–88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Anchovy Advisory Subpanel, Anchovy Plan Development Team, Scientific and Statistical Committee Anchovy Subgroup, and the Council's Groundfish Fishery Management Plan (FMP) Rewrite Oversight Group will convene public meetings as follows:

Anchovy Advisory Subpanel, Anchovy Plan Development Team, and Scientific and Statistical Committee Anchovy Subgroup—will convene on June 14, 1988, at 10:30 a.m., at the National Marine Fisheries Service, Southwest Regional Office, 300 South Ferry Street, Terminal Island, CA, to discuss performance of the 1987–1988 anchovy fishery, preliminary 1988 spawning biomass assessment, and preliminary 1988–1989 quotas. Recommendations arising from this meeting will be presented to the Pacific Council at its July 13–14, 1988, meeting in Portland, OR, for implementation.

Groundfish FMP Rewrite Oversight Group—will convene June 14, 1988, at 8 a.m., at the Clarion Hotel, Bayshore Room, 401 East Millbrae Avenue, Millbrae, CA, to continue development of the issues and alternative management solutions which comprise Amendment 4 to the FMP. Major issues include species managed by the FMP, procedures for developing and specifying harvest levels and management measures, expediting the experimental fishing permit process, and recreational bag limits for lingcod. The public meeting will adjourn on June 15 at 5 p.m. For further information contact Mr. Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: May 26, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–13234 Filed 6–10–88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988 Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 13, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 25, 1988, the Committee for purchase from the Blind and Other Severely Handicapped published notices (53 FR 9798) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

Comments were received from the current contractor for 2 of the 12 guide file card sets under consideration. He questioned the capability of the workshop to produce those items due to the complexity of the manufacturing process. He indicated that their addition to the Procurement List would cause severe impact on his firm.

Capability of Workshop To Produce

The workshop is the current competitive Government contractor for 8 of the 12 guide file card sets under consideration. The procuring activity waived the inspection of the workshop on the basis that it is currently producing eight of the items under a competitive contract. The National Industries for the Blind has inspected the workshop and verified that it is capable of producing the guide file card sets in compliance with the Government's requirements. Based on the preceding, the workshop is determined capable of producing the guide file card sets in compliance with the Governments' specification and delivery requirements.

Impact

The commenter related that the loss to his firm as a result of the addition would represent about 38.5% of the card file sales of his firm and 3% of the total output of the plant that manufactures the item. He commented further that the addition would result in the loss of 9 jobs in an area of high unemployment. He stated that, if this proposal is approved, the cumulative value of additions to the Procurement List would represent a loss of about $1.5 million by his firm.

The commenter's firm is a division of a corporation which has annual sales of over $154 million. The firm's contract for these items represents about 0.04% of those sales. Taking into consideration the cumulative impact of this action when combined with recent additions to the Procurement List for which that firm was the current contractor, the value represents about 0.7% of the parent firm's sales and 1.3% of the annual sales of the affected division. This is not considered serious impact.

Relative to the comment on the loss of jobs as a result of this action, the Committee recognizes that a significant loss of business may require a firm to lay off or reassign the employees who were formerly producing the commodity involved. However, the primary purpose of the Committee's program is to create job opportunities for blind and severely handicapped individuals who are unable because of their disabilities to obtain competitive employment and to assist in the rehabilitation of those individuals through work (House Report No. 92–228, May 25, 1971). This action will create employment for blind individuals in fulfillment of that purpose.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under Pub. L. 92–28, 85 Stat. 77 (1971) (41 U.S.C. 46–48c), and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1988:

Card Set, Guide File
7530–00–249–5969
7530–00–261–3801
7530–00–261–3804
7530–00–261–3813
7530–00–261–3818
7530–00–261–3819
7530–00–574–7172
7530–00–861–1263
7530–00–861–1270
7530–00–861–1272
7530–00–861–1275
7530–01–175–1553

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88–13235 Filed 6–10–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board will be held 13 July to 15 July 1988, from 9:00 a.m. to 5:00 p.m. at the (COMPRI) Hotel, 2700 Eisenhower Avenue, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Kee, IIT Research Institute, 4600 Forbes Blvd., Lanham, MD 20706 (703) 685–1477.

June 8, 1988.

L.M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 88–13255 Filed 6–10–88; 8:45 am]

BILLING CODE 3810–01–M

DIA Scientific Advisory Committee

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of § 10 of Pub. L. 92–463, as amended by § 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been changed as follows: the 16 June 1988 meeting has been rescheduled to the date listed below.

DATE: July 12 1988, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E'. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in § 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1988

[FR Doc. 88–13203 Filed 6–10–88; 8:45 am]

BILLING CODE 3810–01–M

DIA Scientific Advisory Committee; Tactical Intelligence Information Handling Systems Panel

AGENCY: Defense Intelligence Scientific Advisory Committee.

ACTION: Notice of cancellation of closed meeting.

SUMMARY: Notice is hereby given that the closed meeting of the DIA Scientific Advisory Committee's Tactical Intelligence Information Handling Systems Panel, scheduled for 21 June 1988, that was announced in the Federal Register on Wednesday, 24 February 1988, Vol. 53, No. 36, 5443 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatfield, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1988.

[FR Doc. 88–13204 Filed 6–10–88; 8:45 am]

BILLING CODE 3670–01–M

DIA Scientific Advisory Committee

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of § 10 of Pub. L. 92–463, as amended by § 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been changed as follows: The 15 June 1988 meeting has been rescheduled to the date listed below.

DATE: July 13, 1988, 8:30 a.m. to 3:30 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in § 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1988.

[FR Doc. 88–13205 Filed 6–13–88; 8:45 am]

BILLING CODE 3810-01-M

[CFDA No.: 84.117Q]

Notice Inviting Application for New Awards Under the Research and Development Centers Program for Fiscal Year 1989

Purpose: To support a research and development center to study citizenship and character education.

Deadline for Transmittal of Applications: September 16, 1988.

Applications Available: June 17, 1988.

Available Funds: The Department estimates that $500,000 will be available for this competition in fiscal year 1989. However, the actual level of funding is contingent upon final congressional action.

Estimated size of Awards: $500,000.

Number of Awards: 1.

Project Period: Up to 5 years.

Applicable Regulations: (a) The regulations for the Regional Educational Laboratories and Research and Development Centers Programs as proposed to be codified in 34 CFR Parts 706 and 708. Applications will be accepted based on the notice of proposed rulemaking published in the **Federal Register** on March 22, 1988 (53 FR 9408). If any substantive changes are made in the final regulations for these programs, applicants will be given an opportunity to revise or resubmit their applications. (b) The Notice of Proposed Biennial Research Priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625). Applications will be accepted based on the Notice of Proposed Biennial Research Priorities. If any substantial changes affecting the priority chosen for this competition are made in the final biennial research priorities, applicants will be given an opportunity to revise or resubmit their applications. (c) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Priorities: The Secretary has chosen from the notice of proposed biennial research priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625) the following as an absolute priority: Citizenship and Character Education. This priority includes understanding the processes of citizenship and character education, concentrating on what is taught and learned in schools and communities, how learning takes place, and determining how education may affect adult participation in civic life.

Within this absolute priority the Secretary invites applications proposing research and related activities designed to provide information to improve the development of those qualities necessary for responsible citizenship through the teaching of history and civics, and to investigate the relationship between student involvement in voluntary associations and adult civic participation. However, applications that meet these invitational priorities will not receive an absolute or competitive advantage over applications within the absolute priority that do not meet these invitational priorities.

Weighting for Selection Criteria: The program proposed regulations at 34 CFR 706.20(e) authorize the Secretary to distribute an additional 10 points among the criteria described in the regulations at § 708.11 to bring the total to a maximum of 100 points. The Secretary will distribute the reserve 10 points as follows: 5 additional points to the criterion at § 708.11(a) (Mission and strategy), bringing the total for this criterion to 20 points; and 5 additional points to the criterion at § 708.11(d) (Technical soundness), bringing the total for this criterion to 25 points.

For Applications Or Information Contact: Dr. Ivor Pritchard, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, Mail Stop 1606, 555 New Jersey Avenue NW., Washington, DC 20208–1606. Telephone Number (202) 357–6223.

There will be a briefing for prospective applicants on July 8, 1988 from 1:00 p.m. to 3:00 p.m. in Room 326, 555 New Jersey Avenue NW., Washington, DC 20208.

Program Authority: 20 U.S.C. 1221e.

Dated: June 7, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–13176 Filed 6–10–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Application Filed With the Commission

June 7, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application. Extension of Time to Complete Construction.

b. Project No.: 2998–007.

c. Date filed: March 28, 1988.

d. Applicant. Massachusetts Bay Power Company.

e. Name of Project: Centennial Island Project.

f. Location: On the Concord River, City of Lowell, Middlesex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Kenneth M. Scagel, Massachusetts Bay Power Company, P.O. Box 188, Lowell, MA 01853.

Jerome A. Olson, 168 Rea Street, Lowell, MA 01852.

i. FERC Contact: Hossein Ildari, (202) 376–9060.

j. Comment Date: July 7, 1988.

k. Description of Project: On September 28, 1981, an exemption from licensing was issued by the Commission for the subject project. By orders dated July 16, 1985, October 24, 1986, and October 16, 1987, the deadline for completing project construction was extended to September 28, 1986, September 28, 1987, and March 31, 1988. The applicant is now seeking an 18-month extension of time, to September

30, 1989, to complete construction. This public notice is given in addition to the public meeting which was held in the City of Lowell on May 23, 1988, concerning the same subject.

1. Comments Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR, Part 385, Subpart B. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date. Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number. Any of the above named documents must be filed by providing an original and fourteen copies as required by the Commission's regulations to: Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Hossein Ildari, Federal Energy Regulatory Commission, OHL, DPCA, Room 307 RB, at the above address. A copy of any motion to intervene must also be served upon each representative of the applicant specified herein.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13200 Filed 6-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-281-001]

James River Paper Co.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

June 7, 1988.

On May 27, 1988, James River Paper Company (Applicant), of 100 Island Avenue, Parchment, Michigan, 49004, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The original application was filed on March 1, 1988 and granted on May 4, 1988 (43 FERC § 62,138). The recertification is requested due to a proposed improvement in the operation of the facility that will increase its efficiency and will increase the net electric power production capacity to 123.9 MW. All other facility's characteristics remain unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 20 days after the date of publication of this notice and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13196 Filed 6-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-451-000, et al.]

Northeast U.S. Pipeline Projects; Settlement Discussions

June 7, 1988.

On June 3, 1988, following the Market Technical Conference concerning the open-season applications, the parties met to discuss settlement and consider joint venture proposals to provide new gas service to the Northeast United States. At the end of these discussions, there was consensus that further Settlement Discussions should be scheduled. Accordingly there will be an additional opportunity to discuss settlement on June 30, 1988, at 10:00 a.m., in a room to be announced at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Parties are again encouraged to develop proposals that simplify and consolidate various projects and eliminate any unnecessary or duplicative projects. In order to ensure that the discussions are productive, parties are requested to submit a copy of any settlement proposal that will be addressed to other project sponsors and interested parties and the designated staff contact by June 23.

This will enable parties to review settlement proposals prior to the discussions and will result in meaningful comment and possibly in counterproposals.

FOR FURTHER INFORMATION CONTACT: Lee A. Alexander, Office of the General Counsel, GC-11.3, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-9176.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13197 Filed 6-10-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3393-3]

Alternate Concentration Limit Guidance for Hazardous Waste Management Facilities; Part II; Case Studies

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Guidance Document; Case Studies.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of an interim final guidance manual entitled *Alternate Concentration Limit Guidance: Case Studies.* These case studies provide guidance to RCRA facility permit applicants and writers concerning the establishment of Alternate Concentration Limits (ACLs) and they constitute Part II of the ACL Guidance Document. They are designed to supplement Part I of the ACL guidance, *Policy and Information Requirements.* An ACL is one of three possible hazardous constituent concentration limits that can be used to establish the ground water protection standard in the RCRA permit. The other two possible concentration limits are background levels of the hazardous constituents, or maximum concentration levels listed in 40 CFR Part 264 Subpart F. To obtain an ACL, a permit applicant must demonstrate that the hazardous constituents detected in the ground water will not pose a substantial present or potential hazard to human health or the environment at the ACL levels. ACLs are granted through the permit process under 40 CFR Parts 264 and 270 and are established in the context of the facility ground-water protection standard. The 19 factors, or criteria, that are used to evaluate ACL requests are listed in 40 CFR 264.94(b) of the regulation. Detailed information on each of these criteria is not required in every ACL demonstration because each demonstration requires different types

and amounts of information, depending on the site-specific characteristics. These case studies are intended to assist Regional and State personnel in exercising the discretion conferred by regulation in evaluating applications for ACLs submitted pursuant to 40 CFR 264.94. Since the case studies provide examples of data that actual ACL demonstrations may contain, they should also aid ACL applicants in preparing demonstrations. A summary of each of the case studies follows:

Case Study 1 is an example of an ACL application where contamination of ground water at a facility has been detected after permit issuance. In this example, the ground water under the facility is useable as a drinking water source. Since contamination has just been detected, no attenuation of contaminants in the ground water was assumed and the ACLs were derived directly from the allowable exposure concentrations.

Case Study 2 is an example of an ACL application where ground water under the facility is useable as a drinking water source and contamination is confined to the facility property. In this case, attenuation between the waste management unit (the point of compliance) and the leading edge of the contamination was accounted for. The allowable exposure levels were established at the edge of the contamination and were used to calculate the ACLs back at the point of compliance.

Case Study 3a is an example of an ACL application where contaminated ground water has migrated off the facility property. In this example, ground water under the facility is naturally useable as a drinking water source. Since the waste management unit is adjacent to the facility boundary, no attenuation was accounted for in deriving the ACLs.

Case Study 3b is also an example of an ACL application where contamination has migrated off the facility property. The ground water is potentially useable as a drinking water source; however, use is not expected in the near term. Because the facility is closing, no attenuation of the contaminants was assumed and the ACLs were derived directly from the allowable exposure concentrations.

Case Study 4 is an example of an ACL application where contaminated ground water discharges to a river. In this example, ground water under the facility is useable and the river sustains a sport fishery. None of the contaminants have been detected at statistically significant levels in the surface water. The ACLs were derived from allowable surface water exposure levels and current levels found in the ground water.

Case Study 5 is an example of an ACL application where contaminated ground water has migrated off the facility property. In this example ground water under the facility is highly saline. The proposed ACLs rely on fate and transport considerations and were based on the current levels of contamination in the ground water.

DATE: EPA will accept public comments until August 12, 1988. All comments must be postmarked on or before this date.

ADDRESSES: Three copies of written comments should be submitted to the Docket Clerk, Office of Solid Waste (WH-562). U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 and identified as follows: F-88-ACLA-FFFF. Copies of the document entitled, *Alternate Concentration Limit Guidance: Case Studies* are available for viewing at all EPA Libraries and in the EPA RCRA Docket (Sub-basement), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, from, 9:00 a.m. to 4:00 p.m., Monday through Friday, by appointment only. The Docket will be closed on all Federal holidays. Appointments can be made by calling (202) 475-9327. Copies cost 15 cents per page. In addition, these documents are available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: Alternate Concentration Limit Guidance: Case Studies (NTIS #PB88-214-267).

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund hotline, Office of Solid Waste (WH-563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424-9346, or (202) 382-3000. For technical information contact Jerry Garman, (202) 382-4654.

Dated: May 13, 1988.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-13214 Filed 6-10-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59261; FRL-3396-6]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption. Written comments by:

T 88-13, June 10, 1988.

T 88-14, June 22, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-59261)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 88-13

Close of Review Period. June 24, 1988.

Importer. Confidential.

Chemical. (G) Organic dye.

Use/Import. (G) Electrostatic imaging toner additive. Import range: Confidential.

T 88-14

Close of Review Period. July 6, 1988.

Manufacturer. Confidential.

Chemical. (G) Acid ester.

Use-Production. (G) Dispersive use. Prod. range: Confidential.

Dated: June 7, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-13211 Filed 6-9-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3396-2]

Sole Source Aquifer Determination for the Cortland-Homer-Preble Aquifer System, Cortland and Onondaga Counties, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In response to a petition from the Cortland County Legislature, notice is hereby given that the Region II Regional Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Cortland-Homer-Preble Aquifer System (CHPA), underlying portions of Cortland and Onondaga Counties, New York, satisfies all determination criteria as a sole source aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. Satisfying the designation criteria resulted in the following findings: the CHPA is the sole source of drinking water for the aquifer service area; there are no viable alternative drinking water sources of sufficient supply; and, if contamination were to occur, it would pose a significant hazard to the public health. As a result of this action, all Federal financially assisted projects proposed for the area will be subject to EPA review to ensure that these projects are designed and constructed such that they do not bring about, or in any way contribute to, conditions creating a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on June 27, 1988.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Office of Ground Water Management, Room 842, 26 Federal Plaza, New York, NY 10278. The designation petition submitted may also be inspected during normal business hours at the Cortland County Health Department, Cortland County Office Building, 60 Central Avenue, Cortland, NY 13045.

FOR FURTHER INFORMATION CONTACT: John S. Malleck, Chief, Office of Ground Water Management, EPA Region II, 26 Federal Plaza, Room 842, New York, NY 10278, (212) 264-5635.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h-3(e), Pub. L. 93-523) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of the determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On September 15, 1987, EPA received a petition from the Cortland County Legislature requesting designation of the CHPA as a sole source aquifer. EPA determined that the petition, after receipt and review of additional information requested on October 28, 1987, was complete. A public hearing was held on March 3, 1988 at the Cortland County Office Building, Cortland, NY, in accordance with all applicable notification and procedural requirements. All comments received during the comment period were in favor of designation.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the technical review process for designating an area under section 1424(e) were: (1) That the aquifer is the sole or principal source (more than 50 percent) of drinking water for the defined aquifer service area, and that the volume of water available from all alternate sources is insufficient to replace the petitioned aquifer; and (2) that contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the CHPA as a sole source aquifer:

1. The CHPA is the sole source of drinking water to approximately 35,000 residents of the defined aquifer service area, which includes the City of Cortland, the Towns of Cortlandville, Homer, Preble, and Scott, and the Villages of Homer and McGraw.

2. There are no reasonable alternative sources capable of supplying a sufficient quantity of drinking water to the population served by the petitioned aquifer system.

3. Although all public water supply wells meet or exceed the appropriate Federal and State drinking water standards, there have been several cases of private well contamination by organic solvents. In addition, the CPHA is considered highly vulnerable to contamination, due to high soil permeability and shallow depth to ground water. Potential sources of contamination include transportation routes, septic systems, highway, rural and urban run-off, commercial and industrial facilities, and agricultural practices.

III. Description of the CHPA, Designated Area and Project Review Area

The CHPA underlines the northwestern portion of Cortland County and the extreme southern portion of Onondaga County, New York. The aquifer system is delineated by the glacial outwash and stratified drift deposits filling five valleys which meet in the vicinity of the City of Cortland, and covers approximately 25 square miles. The designated area is coincident with that defined by the New York State Departments of Environmental Conservation (NYSDEC) and Health as a Primary Water Supply Aquifer.

The aquifer service area is coincident with the designated area. It includes approximately 35,000 residents in the City of Cortland, the Towns of Cortlandville, Homer, Preble, and Scott, and the Villages of Homer and McGraw.

The recharge area for the CHPA is the designated valleys and the upland areas that drain into them. The streamflow source zone is defined as the upstream area of losing streams which flow into the recharge area. In the Cortland-Homer-Preble area, the streamflow source zone is delineated by the boundaries of the Tioughnioga River drainage basin upstream of the southern end of the designated area (near Blodgett Mills, NY).

Because contaminants introduced in any of these areas have the potential to affect the CHPA, the project review area is defined to include the aquifer service area, the recharge area and the streamflow source zone.

A map delineating the designated areas is available, and may be obtained by contacting the person listed previously.

IV. Information Utilized in Determination

The information utilized in this determination included petition submitted by the Cortland County Legislature, various U.S. Geological Survey and New York State reports submitted with the petition, information contained in EPA files, and written and verbal comments from the public. These materials are available to the public and may be inspected during normal business hours at the address listed previously.

V. Project Review

Publication of this determination requires that EPA review proposed projects with Federal financial assistance in order to ensure that such projects do not have the potential to contaminate the CHPA through its recharge zone so as to create a significant hazard to public health. In many cases, these projects may also be analyzed in an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(c). All EIS's as well as any other proposed Federal actions affecting an EPA program, are required by Federal law (under the so-called "NEPA/309" process) to be reviewed and commented upon by the EPA Administrator.

In order to streamline EPA review of the possible environmental impacts on designated sole source aquifers, when an action is to be analyzed in an EIS, the two reviews will be consolidated and both authorities cited. The EPA review under section 1424(e) will be therefore be included in the EPA review of the EIS (under NEPA).

VI. Summary and Discussion of Public Comment

The public comments received expressed strong support for the designation of the CHPA, as petitioned, as a Sole Source Aquifer. Eleven persons, representing local governments and environmental organizations, presented statements at the public hearing. Two written statements in favor of designation were received.

In addition, written comments were received from NYSDEC. These comments were in favor of the designation, but expressed concern that the northern portion of the aquifer system (that portion in Onondaga County), not included in the petition, would not be designated.

The response to NYSDEC's concern is that, whenever possible, the boundaries of sole source aquifers are based on hydrogeologic criteria rather than political boundaries, because contamination of a portion of the aquifer can affect the downgradient portion of the aquifer. The area recommended for designation is consistent with that requested by NYSDEC.

VII. Summary

Today's action affects the CHPA, located in Cortland and Onondaga Counties, New York. Projects with Federal financial assistance proposed for portions of Cortland, Onondaga and Madison Counties will be reviewed to ensure that necessary ground water protection measures are incorporated into them.

Dated: June 3, 1988.

Christopher J. Daggett,

Regional Adminstrator, Environmental Protection Agency, Region II.

[FR Doc. 88-13215 Filed 6-10-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

June 7, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0107.

Title: Application for Renewal of Radio Station License and/or Notification of Change to License Information.

Form No.: FCC 405-A.

The approval on form FCC 405-A has been extended through April 30, 1991. The June 1987 edition with a previous expiration date of April 30, 1988 will remain in use until updated forms are available.

OMB No.: 3060-0134.

Title: Application for Renewal of Radio Station License.

Form No.: FCC 574-R.

The approval on form FCC 574-R has been extended through April 30, 1991. The September 1987 edition with a previous expiration date of April 30, 1988 will remain in use until updated forms are available.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-13252 Filed 6-10-88; 8:45 am]

BILLING CODE 6712-01-M

Applications Designated for Hearing; Charlottesville, VA et al.

1. The Common Carrier Bureau, under delegated authority, has designated for hearing cellular radio system applications filed during May 23-28, 1986, for Metropolitian Statistical Areas (MSAs) or markets 241-305. These markets include Charlottesville, Virginia; Sheboygan, Wisconsin; Kokomo, Indiana; Columbia, Misssouri; Burlington, North Carolina; Midland, Texas; Pascagoula, Mississippi; Burlington, Vermont; and Grand Forks, North Dakota.

2. Substantial and material questions of fact have been raised against these applications which require resolution in a hearing. Peter Lewis and his firm, Lewis Telecom, spent a considerable amount of money in the preparation, marketing and filing of approximately 8,600 applications in twenty markets. The selling price of $3 per application left him with a loss which he estimates at approximately $90,000. Lewis contends that he sustained the loss in the hope that several of his customers would win a lottery and retain Lewis as a consultant. A hearing is necessary to determine whether Peter Lewis or Lewis Telecom had control over the applicants or an ownership interest in their applications. The fact that all of Lewis' customers declined to join settlement groups raises questions as to whether they were acting independently and were in control of their applications. The hearing will also determine whether the applicants were the real parties in interest behind their applications.

3. There may also have been an effort to deceive the Commission by withholding information of a connection between Lewis and the applicants. A misrepresentation issue has therefore been specified. Finally, it also appears that the applicants saw only an application package and not their own completed applications when they signed the certifications and Form 401. Therefore, it is possible the certification may have been false.

4. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the following applications have been designed for hearing:

Applicant	MSA	File No.
Theodore M. Jones	Charlottesville, Virginia	4768a-CL-P-256-A-86
Charles N. Smith III	Sheboygan, Wisconsin	4264a-CL-P-277-A-86
Paula M. Aloi	Kokomo,Indiana	79231-CL-P-271-A-86
Eunice E. Singleton	Columbia, Missouri	78156-CL-P-278-A-86
James C. Dial	Burlington, North Carolina	66719-CL-P-280-A-86
Cedric Riggins	Midland, Texas	86843-CL-P-295-A-86
Robert L. Lambert	Pascagoula, Mississippi	78630-CL-P-252-A-86
Lucille B. Tompkins	Burlington, Vermont	3866a-CL-P-248-A-86

5. James R. Crosby, the tentative selectee in Grand Forks, North Dakota obtained his application from Lewis Telecom. This application was inadvertently granted. The issues designated for hearing are applicable to this permittee. Section 312(a) of the Communications Act states that the Commission may revoke any station license or construction permit because of conditions coming to the attention of the Commission which would warrant refusing to grant a license or permit on an original application. 47 U.S.C. section 312 (a)(2). Accordingly, the Bureau ordered that James R. Crosby show cause why its license or station KNKA-571 should not be revoked.

Applicant	MSA	File No.
James R. Crosby	Grand Forks, North Dakota	76237-CL-P-276-A-86

6. In order to avoid duplicative proceedings if the winning applicants are disqualified and other individuals whose applications appear to have been prepared by Lewis succeed to the top spot, the Bureau also made the following second, third and fourth ranked applicants parties to the proceeding:

Applicant	MSA	File No.
Stephen M. Schmidt	Charlottesville, Virginia	65839-CL-P-256-A-86
Maben D. Herring	Charlottesville, Virginia	78851-CL-P-256-A-86
Clarence D. Ramsey	Grand Forks, North Dakota	70017-CL-P-276-A-86
Agnes A. Allgire	Grand Forks, North Dakota	75638-CL-P-276-A-86
Lowell V. Waddell, Jr.	Sheboygan, Wisconsin	65835-CL-P-277-A-86
Daniel W. O'Connell	Sheboygan, Wisconsin	78061-CL-P-277-A-86
Ronald W. Hawkins	Sheboygan, Wisconsin	76212-CL-P-277-A-86
Willie T. Robertson	Columbia, Missouri	85305-CL-P-278-A-86
Agnes M. Poindexter	Midland, Texas	79381-CL-P-295-A-86
Michael deH. Newson	Midland, Texas	68145-CL-P-295-A-86
Clyde E. Howard III	Burlington, Vermont	75767-CL-P-248-A-86

7. Peter Lewis and Lewis Telecom were also made parties to this proceeding.

8. Pursuant to section 309(e) of the Communications Act of 1934, these applications have been designated for hearing in a consolidated proceeding to resolve the following issues:

(1) To determine all the facts and circumstances surrounding the preparation and filing of the capitoned applications and amendments.

(2) To determine the facts and circumstances surrounding any relationships, agreements or understandings, express or implied, between Lewis and the applicants.

(3) Based on the evidence adduced above whether:

(a) The applicants and permittee are the real parties in interest behind their applications.

(b) The applicants and permittee complied with the § 22.921(b).

(c) The applicants and permittee have misrepresented material facts to the Commission or have lacked candor.

(4) To determine the facts and circumstances surrounding the signing of the certification by each applicant.

(5) Based on the evidence adduced under issue (4) whether the applicants complied with § 22.913 of the Rules.

(6) To determine whether Lucille B. Tompkins will comply with the condition of her loan commitment requiring her to utilize a particular management company.

(7) Based on the evidence adduced under issue (6) whether Lucille B. Tompkins is financially qualified.

(8) Based on all the above whether a grant of the pending applications would be in the public interest, convenience and necessity.

(9) Based on all the above whether James R. Crosby's construction permit should be revoked.

9. A copy of the complete Hearing Designation Order in this proceeding (CC Docket No. 88-278) is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc. 2100 M. Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Federal Communications Commission.

Gerald Vaughan,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 88 13254 Filed 6-10-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010636–041.

Title: U.S. Atlantic-North Europe Conference ("Conference").

Parties: Atlantic Container Line, B.V.; Dart-ML Limited; Hapag-Lloyd AG; Sea-Land Service, Inc.; A.P. Moller-Maersk Line; Gulf Container Line (GCL), B.V.; P&O Containers (TFL) Limited; Compagnie Generale Maritime (CGM); Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment describes the neutral body self-policing authority of the membership. In particular, it would set forth the rules applicable to those members who are not parties to the North Europe Compliance Agreement ("Compliance Agreement"). Those non-participatory members shall be policed under the rules and procedures set forth in the Conference Agreement rather than those of the Compliance Agreement (FMC No. 203–011160). The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: June 8, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88–13264 Filed 6–10–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007690–022.

Title: India, Pakistan, Bangladesh, Ceylon & Burma Outward Freight Conference.

Parties: The Scindia Steam Navigation Co., Ltd.; The Shipping Corporation of India, Ltd.; Waterman Isthmian Line.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

Agreement No.: 202–008050–016.

Title: Sri Lanka/U.S.A. Conference.

Parties: The Scindia Steam Navigation Co., Ltd.; The Shipping Corporation of India, Ltd.; Waterman Isthmian Line.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

Agreement No.: 202–008650–015.

Title: Calcutta, East Coast of India and Bangladesh/U.S.A. Conference Agreement.

Parties: The Bangladesh Shipping Corporation; The Scindia Steam Navigation Co., Ltd.; The Shipping Corporation of India, Ltd.; Waterman Isthmian Line.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

Agreement No.: 203–011197.

Title: Japan Line, Ltd.; Yamashita-Shinnihon; Steamship Co., Ltd.; Planning; and Implementation Agreement.

Parties: Japan Line, Ltd.; Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed agreement would permit the parties to discuss, plan and establish a joint service between ports and points in the United States (including Hawaii and Alaska), and ports and points in Canada, New Mexico, the Far East, South and Southeast Asia, India, Pakistan, Bangladesh, the Persian Gulf, Australia, and New Zealand. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: June 8, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88–13168 Filed 6–10–88; 8:45 am]

BILLING CODE 6730–01–M

Inquiry on Tariff Automation; Delay in Issuance of Request for Proposals

June 8, 1988.

On May 23, 1988, the Federal Maritime Commission announced that it has delayed release of the Commission's final Request for Proposals (RFP) on the Automated Tariff Filing and Information System (ATFI), originally scheduled on June 10, 1988. Issues raised by the House Subcommittee on Information, Justice, and Agriculture (Subcommittee) and by the Office of Management and Budget (OMB) have prompted this delay.

The Commission remains committed to tariff automation and plans to issue an RFP by August or September, 1988. The Commission intends to reassess the proposed ATFI system in the interim.

The concern expressed by the Subcommittee and OMB center on the "remote retrieval" feature in the proposed system. This feature would allow the shipping public to dial for access to an individual tariff of a carrier or conference and would give access to one tariff at a time. However, it would not provide for sophisticated searches.

Questions concerning the "remote retrieval" feature are based on perceptions that the Commission would compete with existing or intended value-added services offered by private sector firms. The Commission, however, does not intend to provide these value-added services.

The eventual system to be adopted by the Commission will require congressional acceptance through the authorization and appropriations process.

By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88–13291 Filed 6–10–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

June 7, 1988.

Background. Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of

Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Robert Neal, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Proposal to approve under OMB delegated authority the extension, without revision, off the following report:

Report title: Quarterly Report of Condition for a New York State Investment Company and its Domestic Subsidiaries.

Agency form number: FR 2886a.

OMB Docket Number: 7100–0207.

Frequency: Quarterly.

Reporters: New York State Investment Companies.

Annual reporting hours: 864.

Small businesses are not affected.

General description of report:

This report is authorized by Federal law [12 U.S.C. 3105 (b)(1) and 353 et seq.] and by state law [New York State Banking law 513]. Data from Schedule M are given confidential treatment [5 U.S.C. 552(b)(8)].

This report provides data used by the New York State Banking Department for supervisory purposes, and by the Federal Reserve in constructing various statistical series, including money stock, bank credit, assets and liabilities of domestically chartered and foreign-related banking institutions, nondeposit sources of funds for commercial banks, and flow of funds accounts.

Board of Governors of the Federal Reserve System, June 7, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–13185 Filed 6–10–88; 8:45 am]

BILLING CODE 6210–01–M

Atlas Towing Co., Inc. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Atlas Towing Company, Inc.*, Parkersburg, West Virginia; to acquire 5.9 percent of the voting shares of Wesbanco, Inc., Wheeling, West Virginia, and thereby indirectly acquire Wheeling Dollar Bank, Wheeling, West Virginia; New Martinsville Bank, New Martinsville, West Virginia; First-Tyler Bank & Trust Co., Sistersville, West Virginia, Brooke National Bank, Wellsburg, West Virginia; Bank of Sissonville, Sissonville, West Virginia; First National & Trust Co., Wheeling, West Virginia; South Hills Bank, Charleston, West Virginia; Wirt County Bank, Elizabeth, West Virginia; and Mountain State Bank, Parkersburg, West Virginia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Johnson Heritage Bancorp, Ltd.*, Racine, Wisconsin, formerly Heritage Racine Corporation, to acquire 100 percent of the voting shares of Community National Bank, Mukwonago, Wisconsin.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Norwest Bank Nebraska Lincoln, Lincoln, Nebraska, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–13182 Filed 6–10–88; 8:45 am]

BILLING CODE 6210–01–M

Delhi Bancshares, Inc., Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88–12464) published at page 20367 of the issue for Friday, June 3, 1988.

Under the Federal Reserve Bank of Chicago, the entry for Delhi Bancshares, Inc. is revised to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Delhi Bancshares, Inc.*, Traer, Iowa; to acquire Manchester Insurance Service, Manchester, Iowa; and thereby egage in property and casualty insurance, accident and health insurance, crop and hail insurance, and life insurance and annuly products, pursuant to §§ 225.25(b)(8)(iii) and 225.25(b)(8)(vi) of the Board's Regulation Y.

Comments on this application must be received by June 24, 1988.

Board of Governors of the Federal Reserve System, June 7, 1988.

James McAfee,

Asssociate Secretary of the Board.

[FR Doc. 88–13186 Filed 6–10–88; 8:45 am]

BILLING CODE 6210–01–M

Michigan National Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Michigan National Corporation*, Farmington Hills, Michigan; to engage *de novo* through its subsidiary, Independence One Commercial Services Corporation, Philadelphia, Pennsylvania, in making or acquiring for its own account or for the account of others, loans and other extensions of credit, secured or unsecured to individuals and businesses including but not limited to consumer lending, residential and nonresidential real estate lending and commercial lending, and servicing loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Heritage Bancshares Corporation*, Willmar, Minnesota; to expand the general insurance activities presently conducted by its subsidiary, Pennock Insurance Agency, from a community with a population of less than 5,000 persons to a community with a population in excess of 5,000 persons pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y. These activities will be conducted within a 100 mile radius of Willmar, Minnesota.

Board of Governors of the Federal Reserve System, June 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-13183 Filed 6-10-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 28, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *William Anthony Rand*, North Little Rock, Arkansas; to acquire an additional 6.0 percent of the voting shares of National Banking Corp., North Little Rock, Arkansas, and thereby indirectly acquire National Bank of Arkansas in North Little Rock, North Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, June 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-13184 Filed 6-10-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Incentive Grants for Injury Control Intervention Projects Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

The Centers for Disease Control (CDC) announces that applications are being accepted for incentive grants to support injury control intervention projects.

Background

Opportunities to understand and prevent injuries and reduce their effects are available. Many interventions to prevent or control injury are available but they have not yet been widely adopted. This grant proposal is to assist States and local health departments in developing, implementing, and evaluating interventions targeted to specific injury problems. The interventions employed must have previously proven successful or have a reasonable expectation of success. To utilize these opportunities will require a broad approach to injury control, incorporating many disciplines that heretofore have not been an integral part of public health efforts.

Grant support is to provide resource support to implement an intervention plan for one or more significant injury problems. It presumes that there already exists or is the framework for an injury control program (with surveillance and evaluation capability and an already defined injury problem).

Goals

A. To establish a State or local intervention program that addresses a significant injury problem or problems.

B. To measure the impact of the intervention(s) in terms of reduced morbidity, mortality, severity, disability, and/or medical costs, and acceptance.

C. To serve as a demonstration to other State and community health agencies considering the implementation of intervention strategies.

Programmatic Interests

The focus of grants should reflect the broadly-based need to control injury morbidity, mortality, severity, disability, and and/or medical costs. *The "1990 Health Objectives for the Nation" emphasize the importance of injury control and should be referenced as applicable to the grant.* Reference should be made if current injury control activities have been designed based on or consistent with "Model Standards: A Guide for Community Preventive Health Services—Second Edition," published by the American Public Health Association.

Authority: The legislative authority for this program is section 392 of the Public Health Service Act. The Catalog of Federal Domestic Assistance number is 13.136.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands.

Availability of Funds

Funds in the amount of about $400,000 are available to support injury control intervention projects. These funds will be awarded in the area of intentional injuries (e.g. homicide, suicide, and child/spouse abuse) as well as unintentional injuries. CDC expects to

support up to 6 grants (up to $100,000 each) in Fiscal Year 1988. These incentive grants are intended to help develop or improve injury control intervention programs conducted by State and local health agencies, and are not intended to supplant existing funding for injury control program activities. The initiative will provide grant support for a period of one to three years with the expectation that State or local support will increase during the project period.

Application Review and Evaluation Criteria

Review of the application will be conducted in accordance with PHS Grants Administration Manual Part 134, Objective Review of Grant Applications.

Factors considered in the objective review will are as follows. Also, Percentage ratings repesent the weight given to each critieria.

1. *Understanding the Problem* (15%).
2. *Managerial Ability* (20%).
3. *Personnel* (10%).
4. *Technical Approach* (40%).
5. *Budget and Justification* (NOT SCORED).
6. *The Public Health Importance of Injuries to be Addressed and Proposed Interventions* (10%).
7. *Potential for Replicability of the Intervention Program in Other State and Local Jurisdiction* (5%).

Application and Submission Deadline

A. Application

The original and two copies of the Application Form 5161–1 must be submitted on or before July 15, 1988, to the: Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 225 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

B. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the objective review committee. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

3. Applications which do not meet the criteria in 1. or 2. are considered late applications and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where To Obtain Additional Information:

A full description of the program, programmatic interest, criteria for review of applications, program requirements, application forms, and other materials may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–14, Atlantic, Georgia 30305, or by calling (404) 842–6575 or FTS 236–6575.

Technical assistance may be obtained from Harvey F. Davis, Jr., M.P.H., Center for Environmental Health and Injury Control Centers for Disease Control Mail Stop F–36, Koger Center Atlanta, Georgia 30333 (404) 488–4662 or FTS 236–4662.

Please note that this announcement is distinct from another notice to be issued by CDC entitled "Cooperative Agreements for the Prevention of Disabilities."

Dated: June 7, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–13190 Filed 6–10–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Reid-Rowell, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Reid-Rowell, Inc. The NADA provides for use of the combination drug dichlorophene/toluene capsules as an anthelmintic in dogs and cats. The firm requested the withdrawal of approval.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Reid-Rowell, Inc. (formerly Reid-Provident Laboratories, Inc.), 901 Sawyer Rd., Marietta, GA 30062, is the sponsor of NADA 102–673 which provides for use of Anaverm (dichlorophene/toluene) capsules for removal of ascarids and hookworms and as an aid in removing tapeworms from dogs and cats. The NADA was originally approved on September 14, 1976.

In a letter dated October 23, 1987, the sponsor requested the withdrawal of approval because the product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 102–673 and all supplements thereto is hereby withdrawn, effective June 23, 1988.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the entry for "Reid-Provident Laboratoreis, Inc." from the list of sponsors of approved NADA's in 21 CFR 510.600(c)(1) and removing the drug labeler code No. "000063" from 21 CFR 510.600(c)(2) and 520.580(b)(2).

Dated: June 6, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–13272 Filed 6–10–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0217]

Drug Export; Antihemophilic Factor (Human), Lyophilized Powder

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alpha Therapeutic Corp. has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human), Lyophilized Powder to West Germany.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics

Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8095.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Alpha Therapeutic Corp., 5555 Valley Blvd., Los Angeles, CA 90032, has filed an appliction requesting approval for the export of the biological product Antihemophilic Factor (Human), Lyophilized Powder to West Germany. The Antihemophilic Factor (Human), Lyophilized Powder is a modified formulation of the currently licensed product, and is intended for the prevention and control of bleeding in patients with moderate or severe Factor VIII deficiency due to hemophilia A or acquired Factor VIII deficiency. The application was received and filed in the Center for Biologics Evaluation and Research on May 24, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 23, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: June 6, 1988.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 88–13270 Filed 6–10–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0216]

Drug Export; Dilaudid Tablets and Dilaudid Oral Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Knoll Pharmaceuticals has filed an application requesting approval for the export of the human drug Dilaudid Tablets and Dilaudid Oral Solution to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Knoll Pharmaceuticals, 30 North Jefferson Rd., Whippany, NJ 07981, has filed an application requesting approval for the export of the drug Dilaudid Tablets and Dilaudid Oral Solution to Canada. Dilaudid is used for the relief of moderate to severe pain. The application was received and filed in the Center for Drug Evaluation and Research on May 27, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 23, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 3, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88–13271 Filed 6–10–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Availability of Funds To Provide Health Services in the Pacific Basin

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of fund availability.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that up to $1.149 million is available under Section 301 of the Public Health Service Act, 42 U.S.C. 241, for projects to build capacity and improve health services and systems, particularly preventive health services, in the Commonwealth of the Northern Mariana

Islands, American Samoa, Guam, Federated States of micronesia, Republic of the Marshall Islands and the Republic of Palau and to provide technical assistance relative to such projects. Eligible applicants include any public or private nonprofit or for profit entities.

DATE: To receive consideration, applications must be received in the HHS regional office, at the address below, by 3:30 p.m. Pacific Daylight Time of July 15, 1988. Competing applications will be considered "on time" if they are either received on or before the established deadline date, or sent on or before the established deadline date and received in time for orderly processing.

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Any application which does not meet the deadline will be returned to the applicant.

ADDRESS: Application for grants is made on PHS form 5161–1 (approved under OMB #0348–0006). Grant application guidelines, applications forms and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Mr. Alan S. Harris, Chief, Office of Grants Management, Public Health Service, Region IX, Room 335, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595.

FOR FURTHER INFORMATION CONTACT: Sheridan L. Weinstein, M.D., Regional Health Administrator, Region IX, U.S. Public Health Service, Room 327, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–5810.

SUPPLEMENTARY INFORMATION: The funds were appropriated in order to continue implementation of the report of the U.S. Public Health Service entitled *A Report to the Congress on Health Services in the United States Pacific Island Jurisdictions.*

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Late competing applications not accepted for processing will be returned to the applicant.

Any application which does not meet the deadline will be returned to the applicant.

ADDRESS: Application for grants is made on PHS form 5161–1 (approved under OMB #0348–0006). Grant application guidelines, applications forms and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Mr. Alan S. Harris, Chief, Office of Grants Management, Public Health Service, Region IX, Room 335, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595.

FOR FURTHER INFORMATION CONTACT: Sheridan L. Weinstein, M.D., Regional Health Administrator, Region IX, U.S. Public Health Service, Room 327, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–5810.

SUPPLEMENTARY INFORMATION: The funds were appropriated in order to continue implementation of the report of the U.S. Public Health Service entitled *A Report to the Congress on Health Services in the United States Pacific Island Jurisdictions.*

Copies of this report are available by writing to the Regional Health Administrator at the address stated above. The Senate Appropriations Committee report (Senate Report 100–189, October 1, 1987) stated the Committee's expectation that priority be given to health service projects that are preventive in nature.

In accordance with the Public Health Service Report, the purpose of this effort is to assist the governments of the jurisdictions listed above in their efforts to improve their public health programs, and to further develop the infrastructure for supporting such programs. Examples of public health areas that have been identified are environmental health and sanitation, alcohol, drug abuse and mental health, childhood immunization, and maternal and child health. Applications may be submitted by nonprofit or for profit private entities and State and local governments, including the Commonwealth of the Northern Mariana Islands, the Government of American Samoa, the Government of Guam, The Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

HRSA intends (considering the number and quality of applications, the relative needs of the respective populations to be served, and the extent to which program results can be incorporated and maintained by the various governments) to make awards that can most effectively and efficiently continue implementation of the initiative and encourage and support public health program development by the governments of the several jurisdictions. Grants will be awarded for two-year projet and budget periods.

In recognition of these priorities and the extent of funding available, project costs related to constructien, acquisition or renovation of health facilities and direct payment of costs of health care which otherwise would be the legal responsibility of the local jurisdiction will not be approved. It is anticipated that grant awards may range from $50,000 to $300,000.

To assure that adequate funds are reserved for project proposals submitted by the governments referenced above for the purposes of improving their public health programs which address areas of need identified in the Report, HRSA has set aside a minimum of $600,000 to fund anticipated requests, which are approvable. These funds will be awarded on a competitive basis directly to the Pacific Basin governments referenced above, taking into consideration the quality and priority of applications submitted and the commitment of the Pacific Basin governments to maintain the capabilities or competencies developed by the projects. All applications received will be reviewed against a single, standard set of criteria that will be provided with the application material.

The Regional Health Administrator, Region IX, in coordination with the Bureau of Health Care Delivery and Assistance, HRSA, will be responsible for appointing a project officer, supervising and monitoring any grants made from these funds and maintaining official grant files on any such awards.

An objective review will be conducted by the Bureau of Health Care Delivery and Assistance, HRSA, and the regional office in San Francisco. Grant awards will be issued by the Bureau.

General regulations of the Department relating to the management of grants (45 CFR Part 74) will apply to this grant.

Other Award Information

This program is considered to be subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Executive Order 12372 allows States/territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Guam and the Commonwealth of the Northern Mariana Islands have established such contact points for this review and application packages to be made available under this notice will provide information on the point of contact in these jurisdictions. Since 60 days is allowed for this review, applicants are advised

to discuss projects with, and provide copies of their applications to, contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Office of Grants Management, Region IX.

Catalog of Federal Domestic Assistance

In the OMB Catalog of Federal Domestic Assistance, Health Services in the Pacific Basin Grant Program is listed as Number 13,163.

Dated: March 28, 1988.

David N. Sundwall,

Administrator.

[FR Doc. 88-13193 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

National Childhood Vaccine Injury Act of 1986; Delegation of Authority; Assistant Secretary for Health

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under (1) Part C, Subtitle 2 of Title XXI of the Public Health Service Act (42 U.S.C. 300aa-25 et seq.), as amended; and (2) §§ 312, 313, 314, and 316 of Pub. L. 99-660 (42 U.S.C. 300aa-1 note and 300aa-4 note), as amended hereafter. This authority excludes the authority to promulgate regulations and to submit reports to the Congress.

This delegation became effective upon the date of signature. In addition, I hereby affirm and ratify any actions taken by the Assistant Secretary for Health and his subordinates which involved the exercise of the delegated authorities prior to the effective date of delegation.

Dated: June 1, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-13194 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-17-M

Committee to Coordinate Environmental and Health Related Programs (CCEHRP) and CCEHRP Ad Hoc Subcommittee; Annual Report on Carcinogens Meeting; Correction

In notice document 88-12391 appearing on page 20179 in the issue of June 2, 1988, make the following correction:

In the first column, in the first paragraph, after the sentence ending "* * * July 7, 1988.", insert the following sentence, which was inadvertently omitted: "The meeting will begin at approximately 9:30 P.M., and end at approximately 4 P.M., or at the conclusion of the public comment if this occurs prior to 4 P.M."

John Gallivan,

Regulations Officer.

[FR Doc. 88-13257 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Cheyenne, Wyoming 82003; WY-920-08-4121-11; W-109378]

Invitation for Coal Exploration License; Converse County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for coal exploration license.

SUMMARY: Triton Coal Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Converse County, Wyoming:

T. 52 N., R. 72 W., 6th P.M., WY,
Sec. 27: Lots 3, 4, 5, 6, 11, 12, 13, 14;
T. 52 N., R. 73 W., 6th P.M., WY,
Sec. 24: Lots 11, 12, 13, 14;
Sec. 25: Lots 11, 12, 13, 14.
Containing 720.64 acres

All of the coal in the above land consists of unleased Federal coal, within the Powder River Basin known coal leasing area. The purpose of the exploration is to construct ground water monitoring wells in the area.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W-109378): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82003; and Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in a newspaper once each week for two consecutive weeks beginning the week of April 25, 1988, and in the **Federal Register.** Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Triton Coal Company no later than 30 days after publication of this invitation in the **Federal Register.** The written notice should be sent to the following addresses: Triton Coal Company, Buckskin Mine, P.O. Box 3027, Gillette, Wyoming 82716, and the Bureau of Land Management, Wyoming State Office, Branch of Mining Law and Solid Minerals, Wyoming State Office, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003. The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, § 3410.2-1(c)(1).

Hillary A. Oden,

State Director.

[FR Doc. 88-13191 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-84-M

[WY-010-08-4220-10]

Meetings; Spanish Point Caves Withdrawal; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice intent to conduct a public scoping meeting for the Spanish Point Caves Withdrawal, W-101818.

SUMMARY: Pursuant to 43 CFR 2310.3-1(2)(v) a public meeting will be held on Wednesday July 13, 1988 at 7:00 p.m. at the Worland District Office, 101 South 23rd Street, Worland, Wyoming to accept public comment on the proposed Spanish Point Caves Withdrawal. The proposed withdrawal affects 11,415.86 acres of federal mineral estate beneath private surface, and lands administered by the Bureau of Land Management and the Forest Service. These lands are located in Big Horn County, north of Hyattville, Wyoming. The withdrawal will segregate these lands from the operation of the nondiscretionary land laws, including mining claim location under the General Mining Law of 1872, as amended, in order to protect important water recharge and cave areas associated with the Tres Charros and Great Expectations Cave System.

DATES: Written comments may be mailed prior to July 13, 1988. Written or oral comments may also be submitted at the public meeting on July 13, 1988, at 7:00 p.m.

ADDRESS: Worland District Office, Bureau of Land Management, Conference Room 101 South 23rd Street, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: Mark Goldbach, Bureau of Land Management, Worland District Office, Washakie Resource Area, P.O. Box 119, Worland Wyoming, 82401, (307) 347-9871.

Darrell Barnes,

District Manager.

[FR Doc. 88-13218 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-22-M

[ID-020-08-4212-13; I-19668E]

Realty Action, Sale of Public Lands in Oneida County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Oneida County, Idaho.

DATE AND ADDRESS: The sale offering will be held on September 7, 1988, at 1:30 p.m. at the Deep Creek Area Office, 138 South Main, Malad, Idaho, 83252. If unsold on this date, the land parcel will be re-offered the first Wednesday of each month for three consecutive months until sold or the sale is otherwise suspended.

SUMMARY: the following described land has been examined and through the public supported land use planning process, has been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal. This land is hereby segregated from appropriation under the public land laws including the mining laws as provided by 43 CFR 2711.1-2(d).

Name	Boise Meridian, Idaho legal description	Acres	Appraised fair market value	Type of bidding
Gwenford (I-19668E)	T. 15S., R. 35E., B.M., Section 9: SW¼SW¼	40.00	$2,000.00	Modified.

When patented, the land will be subject to a reservation of the oil and gas resources to the United States.

Sale Procedures: The above described land will be sold by modified competitive bidding procedures as follows: All sealed bids (with the parcel name and serial number CLEARLY marked in the lower left hand corner of the envelope) must be received by 1:30 p.m. on the designated sale dates at the Deep Creek Area Office.

Only sealed bids for no less than the appraised fair market value will be accepted. A bid will also constitute an application for the conveyance of the mineral rights except oil and gas. Each bidder must submit a fifty dollar ($50.00) (non-returnable for the high bidder) filing fee for the mineral conveyance (43 CFR 2720.1-2(c)). Each bid shall be accompanied by certified check, postal money order, bank draft, or cashiers check made payable to the Bureau of Land Management for 30 percent (30%) of the bid price. Failure to submit these sums shall result in disqualification of the bid. If two or more valid sealed bids are received for the same amount and are the high bid, a supplemental bidding of the high bidders will be held.

The designated bidder on parcel I-19668E is Andrew Chad Bybee of Pleasantview, Idaho. This designated bidder is offered a preference right to purchase the parcel by matching the highest bid. Failure to accept this offer to purchase within 15 days after the specified sale date or succeeding sale dates shall constitute a waiver of his preference consideration and the next highest bidder will be awarded the sale.

SUPPLEMENTARY INFORMATION: Detailed information concerning the land, terms and conditions of the sale, and bidding instructions may be obtained from John R. Christensen, Deep Creek Area Manager, at the Deep Creek Area Office, 138 South Main, Malad, Idaho, 83252, or by calling (208) 766-4766.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Rt. 3, Box 1, Burley, Idaho, 83318. Objections will be evaluated by the State Director who may sustain, vacate, or modify this notice of realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: June 1, 1988.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 88-13217 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permits; Rex Baker et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT-728166]

Applicant: Rex Baker Merietta, GA.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

[PRT-728172]

Applicant: Al and Jean Van Hulzen, Grants Pass, OR.

The applicant requests a permit to purchase, in interstate commerce, two pairs of captive-hatched Hawaiian (=nene) geese (*Nesochen (=Branta) sandvicensis*) for the purpose of enhancement of propagation. One pair is to be purchased from Randy Rutz, Port Orchard, Washington, and the other pair will be purchased from Wally Caviness, Bellingham, Washington.

[PRT-728134]

Applicant: Tim Parsley, Silver Spring, MD.

The applicant requests a permit to purchase in interstate commerce six captive born scarlet-chested parakeets (*Neophema splendida*) from Ethel Morton, Alhambra, CA for purposes of display and enhancement of propagation.

[PRT-728285]'

Applicant: Clifford E. Sanders, Kingsport, TN.

The applicant request a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. J. M. D'Alton, Bredasdorp, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with those applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days

of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: June 2, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 13278 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits; F.M. "Cotton" Gordon et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT-727645]

Applicant: F.M. "Cotton" Gordon, Lake George, CO.

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

[PRT-727623]

Applicant: Phoenix Zoo, Phoenix, AZ.

The applicant requests a permit to purchase in interstate commerce from International Animal Exchange one male and two female Parma wallabies (*Macropus parma*) that will be imported into the U.S. by International Animal Exchange (PRT-724754). The wallabies are to be imported from the Wellington Zoo in Wellington, New Zealand for enhancement of the propagation of the species. They were born in captivity at the Wellington Zoo.

[PRT-727958]

Applicant: The Peregrine Fund, Boise, ID.

The applicant requests a permit to export ten captive-born Mauritius kestrals (*Falco punctatus*) born in the United States, to The Conservator of Forests, Forestry Department, Curepipe, Mauritius for release into the wild for the purpose of enhancement of propagation of the species.

[PRT-727416]

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to take, import, export and purchase in interstate or foreign commerce blood, semen, other tissues or whole carcasses from any endangered wildlife throughout the world for scientific research (genetic, reproductive and other biomedical evaluation). The tissues are to be obtained from animals in the wild and in captivity.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 8, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-13279 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permits; Oklahoma City Zoo and New York Zoological Society

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.SC. 1531, *et seq.*):

[PRT-728140]

Applicant: Oklahoma City Zoo, Oklahoma City, OK.

The applicant requests a permit to import a captive born female black rhinoceros (*Diceros bicornis*) from the National Zoo, New Delhi, India for purposes of enhancement of propagation and exhibition.

[PRT-727955]

Applicant: New York Zoological Society, Bronx, NY.

The applicant requests a permit to export two male and two female Cuban crocodiles, (*Crocodylus rhombifer*) born in captivity in the United States at the Bronx Zoo to Fundacao Parque Zoologico de Sao Paulo, Sao Paulo, Brazil for enhancement of propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K, Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 2008-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments,

Dated: June 7, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-13280 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Facilities on the Outer Continental Shelf (OCS) Adjacent to California (30 CFR 250.47)

Abstract: Respondents are required to provide the Minerals Management Service (MMS) with information on emissions data and related data from existing and new facilities or modifications to existing and new facilities located on the Federal OCS adjacent to California. The MMS will use this information to identify any potential or existing pollutant emissions and evaluate the potential impact of those operations on the adjacent coastal areas of the State of California.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal OCS oil and gas lessees.
Annual Responses: 123.
Annual Burden Hours: 3,640.
Bureau Clearance Officer: Dorothy Christopher, (703) 435–6213.

Date: June 1, 1988.

Price McDonald,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–13219 Filed 6–10–88; 8:45 am]

BILLING CODE 4310-01-M

National Park Service

[DES 88–33]

Draft Environmental Impact Statement; Katmai National Park and Reserve, AK

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Katmai National Park and Preserve, Alaska and the holding of public hearings and a public meeting.

For Katmai National Monument and Preserve, four alternatives were examined ranging from no action, which means no additional wilderness designation, to designating all suitable lands and waters within the study area as wilderness. Alternative 2, the proposed action, recommends 294,901 acres or 46 percent of study area lands and waters for wilderness designation.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end August 29, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, Alaska 99503. Comments must be received by August 29, 1988, to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Noatak National Preserve, Aniakchak National Monument and Preserve, Cape Krusenstern National Monument, Glacier Bay National Park and Preserve, Denali National Park and Preserve, and Kobuk Valley National Park draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, July 18, 1988, 7:00 p.m., Room 300, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held Tuesday, July 19, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

In addition, a public meeting will be held on Katmai National Park and Preserve Wilderness DEIS on Wednesday, July 20, 1988, at the National Park Service office at King Salmon at 7:00 p.m. A section 810 will be conducted as part of the meeting.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257–2654. The headquarters, P.O. Box 7, King Salmon, Alaska 99614, phone (907) 246–3305 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington, DC, 18th and C Streets, NW.

Date: June 7, 1988.

Jacob J. Hoopland,

Acting Associate Director, Planning and Development.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review United States Department of the Interior.

[FR Doc. 88–13262 Filed 6–10–88; 8:45 am]

BILLING CODE 4310-70-M

[Des 88–32]

Draft Environmental Impact Statement; Kobuk Valley National Park, AK

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Kobuk Valley National Park, Alaska and the holding of public hearings and public meetings.

For Kobuk Valley National Park, three alternatives were examined ranging from no action, which means no additional wilderness designation, to designating all suitable lands within the study area as wilderness. Alternative 2, the proposed action, recommends 414,720 acres or 27 percent of study area lands for wilderness designation.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end August 29, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503. Comments must be received by August 29, 1988, to be considered in the development of the final DIS.

Two formal public hearings have been scheduled to receive oral and written comments on the wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Noatak National Preserve, Aniakchak National Monument and Preserve, Cape Krusenstern National Monument, Glacier Bay National Park and Preserve, Katmai National Park and Preserve, and Denali National Park and Preserve draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska on Monday, July 18, 1988, at 7:00 p.m., Room 300, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held Tuesday, July 19, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

In addition, five public meetings will be held on Kobuk Valley National Park Wilderness DEIS. On Monday, July 25, 1988, in the community hall at Kivalina at 2:00 p.m. and in the community hall at Noatak at 7:00 p.m.; Tuesday, July 26, 1988, in the National Park Service visitor center in Kotzebue at 7:00 p.m.; Wednesday, July 27, 1988, in the IRA building in Ambler at 7:00 p.m.; and Thursday, July 28, 1988, in the community building in Kiana at 7:00 p.m. A section 810 review will be conducted as part of the meetings.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257–2654. The headquarters, P.O. Box 1029, Kotzabue, Alaska 99752, phone (907) 442–3890 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington DC, 18th and C Streets, NW.

Dated: June 7, 1988.

Jacob J. Hogland,

Acting Associate Director, Planning and Development.

Approved.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88-13263 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestion on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Office, Washington, DC 20503, telephone (202) 395-7340.

Title: 30 CFR Part 882—Reclamation on Private Land.

Abstract: Section 408 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, provides that under certain circumstances liens may levied on the private property that has been reclaimed. Part 882 establishes procedures for recovery of the cost of reclamation activities conducted on privately owned lands and is intended to ensure that land owners who acquired the land after a specified date or who benefited from the mining operation will not realize a windfall from the reclamation.

Bureau Form Number: None.

Frequency: As required.

Description of Respondents: States and Indian tribes.

Annual Responses: One.

Annual Burden Hours: One.

Bureau Clearance Office: Nancy Ana Baka (202) 343-5981.

Date: May 19, 1988.

Richard O. Miller,

Chief, Regulatory Development and Issues Management Office.

[FR Doc. 88-13220 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

[Order No. 1275-88]

Establishment of the Personnel Policy Board

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, and in order to recognize the existence of certain policy boards within the Department of Justice, it is hereby ordered as follows:

The Personnel Policy Board (PPB), created on October 13, 1987, provides advice to the Attorney General on personnel issues in the Department. The PPB will explore significant human resource management issues of concern to Department components and recommend the development and application of innovative management practices in response to those concerns. Members of the PPB are the Deputy Attorney General, who shall serve as Chairman, the Associate Attorney General, the Solicitor General, the Chief of Staff to the Attorney General, the Associate Deputy Attorney General, the Director of the Federal Bureau of Investigation, the Assistant Attorney General for the Civil Division, the Assistant Attorney General for Administration, and the Chairman of the U.S. Attorneys Advisory Committee.

Dated: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13263 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1278-88]

Establishment of the Research and Development Review Board

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, and in order to recognize the existence of certain policy boards within the Department of Justice, it is hereby ordered as follows:

The Research and Development Review Board (RDRB), created on September 8, 1986, will (1) broaden Department-wide participation in setting research policy and coordinating research activities; (2) consult with criminal justice practitioners, inside and outside the Federal Government, to determine priority areas for further research; and (3) maintain closer liaison and share research findings (as appropriate), with public and private sector agencies and individuals that conduct criminal justice research. The Associate Attorney General shall serve as Chairman of the RDRB and the Assistant Attorney General for Office of Justice Programs shall serve as Vice Chairman. Members of the RDRB are designated by the Attorney General.

Date: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13286 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1279-88]

Establishment of the Special Issues Coordinating Group

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, it is hereby ordered as follows:

The Special Issues Coordinating Group (SICG) is hereby created. The SICG will provide advice directly to the Attorney General and the Deputy Attorney General on matters relating to national securirty, international affairs, intelligence, counterintelligence, counterterrorism, emergency planning, and continuity of government programs. Members of the SICG shall include the Associate Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Assistant Attorney General for the Office of Legal Counsel, the Assistant Attorney General for the Criminal Division, the Assistant Attorney General for Administration, the Counsel for the Office of Intelligence Policy and Review, and the Special Assistant to the Attorney General for National Security Affairs. The Special Assistant shall also serve as the Executive Officer for the SICG. Other components may be represented as required.

Date: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13287 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1277-88]

Establishment of the Strategic Planning Board

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, and in order to recognize the existence of certain policy boards within the

Department of Justice, it is hereby ordered as follows:

The Strategic Planning Board (SPB), created in June 1985, provides advice to the Attorney General on Departmental policy initiatives and long-term strategies to advance them. The SPB will also examine various law enforcement activities within several Departmental components in order to develop overall strategic approaches to be pursued by the Department. Members of the SPB are the Counselor to the Attorney General, who shall serve as the Chairman, the Solicitor General, the Assistant Attorneys General for the Office of Legal Counsel, Office of Legislative Affairs, Office of Legal Policy, Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Land and Natural Resources Division and Tax Division, as well as the Director of the Office of Public Affairs. The Attorney General may designate additional members.

Dated: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13284 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1276-88]

Establishment of the Department Resources Board

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, and in order to recognize the existence of certain policy boards within the Department of Justice, it is hereby ordered as follows:

The Department Resources Board (DRB), created on June 14, 1985, provides advice to the Attorney General on the Department's planning, programming, and budgeting process. In carrying out this primary role, the DRB will assist the Attorney General in the areas of: (1) Strategic/long range planning and policy development; (2) program development; (3) resource guidance and budget formulation; (4) evaluation of policy implementation; (5) issue analysis; and (6) organizational and management improvement. Members of the DRB are the Deputy Attorney General, who shall serve as the Chairman, the Associate Attorney General, and the Assistant Attorney General for Administraion. A Special Assistant to the Attorney General will attend all meetings of the DRB as an observer from the Office of the Attorney General. The Attorney General may designate additional members.

Dated: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13285 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 6, 1988, a proposed consent decree in *United States of America v. C.F. & I. Steel Corporation*, Civ. No. 88-C-864, was lodged with the United States District Court for the District of Colorado.

The proposed consent decree resolves a judicial enforcement action brought by the United States against C.F. & I. Steel Corporation ("C.F. & I.") for violations of the Clean Air Act. The complaint filed by the United States alleged that defendant violated the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos during demolition activities that took place at Defendant C.F. & I.'s facility in Pueblo, Colorado.

The proposed consent decree enjoins defendant from violating the asbestos NESHAP in the future. The proposed consent decree also requires defendant to pay a civil penalty of $15,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America v. C.F. & I. Steel Corporation*, D.O.J. Ref. 90-5-2-1-1191.

The proposed consent decree may be examined at the office of the United States Attorney, District of Colorado, 1200 Federal Office Building, 1961 Stout Street, Denver, Colorado, 80294, and at the Region VIII office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Thomas A. Speicher, 999 18th Street — Suite 500, Denver, Colorado, 80202. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 88-13290 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984 West Agro, Inc.—Iodophors Joint Venture

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), West Agro, Incorporated—Iodophors Joint Venture ("Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on May 24, 1988, disclosing changes in the Joint Venture membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Joint Venture advised that Henkel Corporation and Morgan-Gallacher, Inc. have become members of the Joint Venture.

On December 15, 1987, the Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on January 15, 1988, 53 FR 1974, as corrected by 53 FR 4232, February 12, 1988.

Joseph H. Widmar,

Director of Operations, Antitrust Divisions.

[FR Doc. 88-13289 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Janssen Inc.

By Notice dated January 6, 1988, and published in the Federal Register on January 15, 1988; (53 FR 1080), Janssen Inc., HC 02, Box 19250, Gurabo, Puerto Rico 00658-9226, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 2, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-13236 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Penick Corp.

By Notice dated April 12, 1988, and published in the **Federal Register** on April 19, 1988; (53 FR 12831), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pholcodine (9314)	I
Alphacetylmethadol (9003)	I
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Pethidine (meperidine) (9230)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Mixed alkaloids of opium (9648)	II
Concentrate of poppy straw (9670)	II
Phenazocine (9715)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 2, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-13237 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Stepan Chemical Co.

By Notice dated February 17, 1988, and published in the **Federal Register** on February 24, 1988; (53 FR 5480), Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 2, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-13238 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration; Stepan Chemical Co.

By Notice dated February 18, 1988, and published in the **Federal Register** on February 24, 1988; (53 FR 5478), Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 2, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-13239 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Upjohn Co.

By Notice dated December 9, 1987, and published in the **Federal Register** on December 15, 1987; (52 FR 47643), Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396)	I
Methamphetamine, its salts, isomers, and salts of its isomers (1105)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 2, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-13240 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Visual Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Special Projects Section) to the National Council on the

Arts will be held on June 29, 1988, from 9:00 a.m.—5:30 p.m., in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of 552b of Title 5, United States Code.

Further informaton with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

June 6, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 88–13221 Filed 6–10–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corp. (Wolf Creek Generating Station); Issuance of Director's Decision (DD–88–6)

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a petition under 10 CFR 2.206 (DD–88–6) filed by Ms. Stevi Stephens and Mr. Robert V. Eye on behalf of the Nuclear Awareness Network (NAN or petitioner). The petitioner asked the U.S. Nuclear Regulatory Commission (NRC) to take enforcement and corrective action related to alleged trespassers on restricted areas at the Wolf Creek Generating Sation. The petitioner alleged that these trespassers may be exposed to undue radiation during normal operation of the facility and that the emergency plan may not be adequate to ensure that trespassers are notified and evacuated during a radiological emergency. The petitioner further alleged that the trespassing is symptomatic of an overall security breakdown at Wolf Creek Generating Station.

The petitioner's request has been denied for the reasons fully described in the Director's Decision Under 10 CFR 2.206, issued on this date, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and the Local Public Document Rooms for the Wolf Creek Generating Station located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas.

A copy of the decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the decision within that period.

Dated at Rockville, Maryland, this 26th day of May 1988.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88–13229 Filed 6–10–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–413 and 50–414[

Duke Power Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52 issued to Duke Power Company, et al., (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The amendments would change the Technical Specifications for the Nuclear Service Water (RN) System and its associated Bases. These changes would show that the RN system contains components that are shared between the two units and would allow placing the system in its Engineered Safety Features (ESF) alignment when the number of operable ESF channels is less than required. In addition to the Technical Specification changes proposed by the licensee, a change will be made to the Catawba Emergency Procedures.

The licensee's submittals dated October 16, 1987, and February 18 and May 12, 1988, also included revised Final Safety Analysis Report (FSAR) pages which will be incorporated in a future update to the FSAR. These changes reflect, among other things, deleting the assumption of a simultaneous loss-of-coolant accident and a seismic event. The licensee stated that this assumption is unnecessary in meeting the requirements of General Design Criteria 5 and 44 or the Standard Review Plan (NUREG–0800) and that this event is probabilistically insignificant.

By letter dated January 22, 1988, the NRC staff requested additional information regarding the RN system Technical Specification and FSAR changes. By letter dated February 18, 1988, the licensee responded to the staff's request.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitoner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director; Project Directorate II–3; (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated October 16, 1987, as supplemented February 18 and May 12, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 6th day of June 1988.

For The Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–13230 Filed 6–10–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DRP–16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The amendment would: (1) Amend paragraph 2.C.(7) of Provisional Operating License DPR–16 to eliminate the requirement for the docketing of inspection results related to the core spray spargers, and obtaining NRC restart authorization for each refueling outage, (2) eliminate the submittal of a special report presenting the results of inservice inspection of the Core Spray Spargers during each refueling outage and (3) propose visual inspections of accessible surfaces in accordance with ASME B&PV Code, Section XI.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petiton for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitoner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificty requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be

litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under considertion. A petitoner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitoner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petiton should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2000 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 13, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 2nd day of June 1988.

For the Nuclear Regulatory Commission.

Robert L. Ferguson,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–13231 Filed 6–10–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25787; File No. CBOE–88–04]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Market Maker Obligations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19–4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on March 23, 1988, a proposed rule change to incorporate into the obligations of market makers an obligation that they participate in and support the Exchange's automated systems.

The proposed rule change was published for comment in Securities Exchange Act Release No. 25570 (April 11, 1988), 53 FR 12839. No comments were received on the proposed rule change.

The Exchange, in Rule 8.7, currently requires market makers to engage in transactions that constitute a course of dealings reasonably calculated to maintain a fair and orderly market.[3] The Exchange proposes to add an Interpretation to this obligation noting that market makers are expected to participate in and support Exchange sponsored automated programs, including but not limited to its Retail Automatic Execution System ("RAES") [4] and Auto Quote.[5]

In addition, the proposed rule change amends the standard of review applicable to market makers. The CBOE Market Performance Committee ("Committee"), which periodically evaluates market makers to determine whether they have fulfilled their performance standards, reviews, among other things, the quality of markets.[6] The proposed rule change would add an Interpretation to Rule 8.12 noting that the quality of markets includes consideration of a trading crowd's participation in the support for Exchange sponsored automated programs, including but not limited to RAES and Auto Quote.[7]

In its submission to the Commission, the Exchange stated that it is proposing the rule change in order to promote the use of automated systems, in particular RAES and Auto-Quote. The Exchange believes that RAES benefits public customers by providing automatic executions at a guaranteed price. Additionally, the Exchange believes that the use of Auto Quote helps prevent the public dissemination of stale quotations in inactive option series and that other future, automated programs, when developed, will enhance market quality. The Exchange believes that market makers as part of their responsibilities should be required to support these programs.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[8] The

[1] 15 U.S.C. 78(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1987).

[3] *See* CBOE Rule 8.7(a).

[4] RAES automatically executes public customer market and marketable limit orders of a certain size (typically ten contracts or fewer) against participating market makers in the CBOE trading crowd at the best bid on offer reflected in the CBOE quotation system.

[5] Auto Quote is the system that electronically updates market quotes by performing certain mathematical operations on specified input to yield updated quotes in another targeted series. The purpose of the system is to accelerate the updating of market quotes particularly in relatively inactive series.

[6] See CBOE Rule 8.12(a). Other factors that the Committee will review are competition among market makers, observance of ethical standards, and administrative factors.

[7] A finding by the Committee that a market maker has failed to meet minimum performance standards may result in substantial penalties including the suspension, termination, or restriction of its registration or trading activity.

[8] 15 U.S.C. 78f (1982).

Commission recognizes the importance and efficiencies of automated systems, in particular automatic execution systems such as RAES. Because the operation of these systems is dependent on market maker participation, the Commission believes that the Exchange must have authority to require adequate levels of market maker participation if these systems are going to function efficiently and on a continuous basis, including during periods of market volatility.[9]

Accordingly, the Commission believes that it is appropriate for the Exchange to take measures to encourage market maker participation in these systems. The Commission notes that the Exchange has proposed related rule changes to strengthen the market maker eligibility requirements for RAES in equity options [10] and for the Standard and Poor's 500 (SPX) index option traded on the CBOE.[11] The Commission believes such efforts by the Exchange are positive steps in strengthening the integrity of its automated systems and will help ensure the continued operation of these systems, including during periods of unusual price fluctuation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [12] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: June 6, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-13281 Filed 6-10-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0413]

Holding Capital Management Corp.; Surrender of License

Notice is hereby given that Holding Capital Management Corporation, 685 Fifth Avenue, 14th Floor, New York, New York 10022 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Holding Capital Management Corporation was licensed by the Small Busienss Administration on November 19, 1981.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on June 1, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1988.

Robert G. Lineberry,

Deputy Associate Administrator

[FR Doc. 88-13275 Filed 6-10-88; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Atlanta, will hold a public meeting from 10:00 a.m. to 3:00 p.m., on Wednesday, July 13, 1988, at the Small Business Administration District Office, 1720 Peachtree Road, NW., Suite 600, Atlanta, Georgia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Wilfred A. Stone, District Director, U.S. Small Business Administration, 1720 Peachtree Road, NW., 6th Floor, Atlanta, Georgia 30309—(404) 347-4749.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 7, 1988.

[FR Doc. 88-13273 Filed 6-10-88; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting at 10:00 a.m., on Wednesday, July 12, 1988, at the Tinker Air Force Base, Area A, Gate No. 1, Building 6001, Arnold Street, Oklahoma City, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Truman Branscum, District Director, U.S. Small Business Administration, 200 NW. 5th Street, Suite 670, Oklahoma City, Oklahoma 73102—(405) 231-4301.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 7, 1988.

[FR Doc. 88-13274 Filed 6-10-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0294]

Revelation Resources, Ltd.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1988)) for Transfer of Control of Revelation Resources, Ltd. (Licensee), 2929 Allen Parkway, Suite 1705, Houston, Texas 77019, a small business investment company (SBIC) and a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et. seq.*)

The licensee is a limited partnership SBIC. Mr. D. Kent Anderson, Limited Partner with 77.4 percent of partnership interest in the licensee and sole shareholder of the Corporate General Partner of the Licensee, Revelation Resources Management Corp. (RRMC) proposes to sell all of his shares of stock of RRMC to Michael R. Walker, the existing individual General Partner of the Licensee.

The Corporate General Partner is defined as "Control Person" in § 107.3 of the SBA Regulations. As such, a change in the ownership of the Corporate General Partner constitutes a change in control of the Licensee.

The Investment Advisor, Corporate General Partner, Individual General Partner and Limited Partners are and will continue to be as follows:

Name	Title or relationship	Percentage of shares owned
Beacon Management Corp (BMC) [1].	Investment Advisor	
Revelation Resources Management Corporation (RRMC) [2].	Corporate General Partner.	0.5

[9] The effect of inadequate market maker participation was demonstrated during the October 1987 market crash when, because of an unwillingness on the part of some CBOE market makers to participate in RAES, among other factors, the CBOE elected to severely limit its operation. For a full discussion of the performance of options market makers during this time, *see The October 1987 Market Break: A Report by the Division of Market Regulation*, U.S. Securities and Exchange Commission (February 1988) at 8-10.

[10] *See* Securities Exchange Act Release No. 25173 (December 4, 1987), 52 FR 47470, and Amendment No. 1 to the proposed rule change published in Securities Exchange Act Release No. 25620 (April 27, 1988), 53 FR 15938.

[11] *See* Securities Exchange Act Release No. 25621 (April 27, 1988), 53 FR 15935.

[12] 15 U.S.C. 78s(b) (1982).

[13] 17 CFR 200.30-3(a)(12) (1986).

Name	Title or relationship	Percentage of shares owned
Chris J. Matthews	Managing Partner and V. President & Director of RRMC.	.....
Michael R. Walker	Individual General Partner and President and Director of RRMC and BMC.	.5
Robert S. Oliver	V. President & Director of RRMC and Managing Director of BMC.	.....
D. Kent Anderson.[1]	Limited partner	77.4
Fairfield State Bank.	.....do	7.8
Centerville State Bank.	.....do	5.1
First Bank, Navasota.	.....do	8.7

[1] Mr. Anderson is 100% owner of BMC. He is also Chairman of the Board of Directors of Allied Bancshares Capital Corp., an SBIC licensed 11/01/79.
[2] Mr. Anderson is proposing to sell his 100% ownership of RRMC to Mr. Walker. The licensee will retain its corporate name and location.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1988.

Robert G. Lineberry

Deputy Associate Administrator for Investment

[FR Doc. 88-13276 Filed 6-10-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 8, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0114.
Form Number: None.
Type of Review: Reinstatement.
Title: Trademark Recordation.
Description: Trademark owners who choose to record their trademarks with Customs for import protection must establish that they own the U.S. trademark, pay the required fee, and provide other information that will aid Customs in their enforcement effort, such as the country of manufacture of goods bearing the recorded trademark.
Respondents: Individuals or households, Businesses or other forprofit, Small businesses or organizations.
Estimated Number of Respondents: 714.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On Occasion.
Estimated Average Reporting Burden: 714 hours.
Clearance Officer: John Poore (202) 566-9181, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-13266 Filed 6-10-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 8, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0066.
Form Number: 2688.
Type of Review: Revision.
Title: Application for Additional Extension of Time to File U.S. Individual Income Tax Return.
Description: Internal Revenue Code section 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by individuals to ask for an additional extension of time to file U.S. income tax returns after filing for the automatic extension, but still needing more time.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,450,000.
Estimated Burden Hours Per Response: 22 minutes.
Frequency of Response: On Occasion.
Estimated Average Reporting Burden: 536,638 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-13267 Filed 6-10-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 6, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer,

Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1021.
Form Number: 8594.
Type of Review: Resubmission.
Title: Special Allocation Rules for Certain Asset Acquisitions.
Description: Section 1060 of the Internal Revenue Code of 1986 requires the seller and the purchaser of a group of business assets to allocate the consideration for the assets among the assets pursuant to the residual method of allocation. The seller and the purchaser must report certain information concerning the allocation of the consideration.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 20,000.
Estimated Burden Hours Per Response: 1 hour 11 minutes.
Frequency of Response: One time generally.
Estimated Average Reporting Burden: 171,053.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88–13288 Filed 6–10–88; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 26]

Surety Companies Acceptable on Federal Bonds: Termination of Authority: Republic-Franklin Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Repulic-Franklin Insurance Company, of Utica, New York, under the United States Code, Title 31, §9304—9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1988.

The Company was last listed as an acceptable surety on Federal bonds at 52 FR 24623, July 1, 1987.

With respect to any bonds currently in force with Republic-Franklin Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Dated: June 3, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 88–13189 Filed 6–10–88; 8:45 am]

BILLING CODE 4810-35-M

Treasury Direct Book Entry Securities System

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice pursuant to 31 CFR 306.23.

SUMMARY: Department of the Treasury Circular No. 300, 4th Revision (31 CFR Part 306), was amended at 53 FR 15553 (May 2, 1988) to authorize the Secretary of the Treasury to publish a notice in the Federal Register announcing those series of Treasury bonds and notes issued before August 1, 1986, that are eligible for conversion and transfer to the TREASURY DIRECT Book-entry Securities System, and the period during which requests for such conversion will be accepted by the Department.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: John E. Logue, Assistant Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (202) 447–9859.

SUPPLEMENTARY INFORMATION: In August 1986, the Department of the Treasury ceased issuing new Treasury bonds and notes in certificated form and offered them thereafter only in book-entry form. At that time, it established the TREASURY DIRECT Book-entry Securities System for those investors desiring a direct relationship with the Treasury Department. The TREASURY DIRECT system provides investors with a number of beneficial terms and conditions, including the convenience and safety of a direct deposit system for interest and redemption payments.

Because of its various attributes, investors have asked to have TREASURY DIRECT made available for Treasury bonds and notes issued prior to August 1, 1986. In response, the Department amended Part 306 by adding § 306.23, which permits the conversion of such securities at such times as the Secretary of the Treasury may designate by notice published in the Federal Register.

Pursuant to the authority granted, notice is hereby given that all Treasury bonds and notes with maturities on or after December 31, 1990, will, on the receipt of a properly executed request by the owner(s), be accepted for conversion and transfer to the TREASURY DIRECT Book-entry Securities System. Requests will be accepted by the Federal Reserve Banks, acting as fiscal agent of the United States, and by the Department, until further notice.

Dated: June 1, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–13222 Filed 6–10–88; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 113
Monday, June 13, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 20937, Tuesday, June 7, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Monday, June 13, 1988.

CHANGE IN MEETING:

The item below has been added to the agenda:

Closed Session

"Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals"

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-7648.

Date: June 8, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88-13349 Filed 6-9-88; 11:49 am]

BILLING CODE 6750-06-M

FEDERAL ENERGY REGULATORY COMMISSION

June 8, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: June 15, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NW., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Item listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matter to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 879th Meeting—June 15, 1988, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 9086-002, Northwest Power Company, Inc.

CAP-2.
Project No. 10495-001, Snoqualmie River Hydro

CAP-3.
Project Nos. 10494-001 and 10496-001, Snoqualmie River Hydro

CAP-4.
Docket No. EL86-44-002, Island Power Company, Inc.

CAP-5.
Project No. 9240-001, Lawrence E. Smith and Veronica P. Smith

CAP-6.
Project No. 9756-001, Edwards T. Navickis

CAP-7.
Project No. 10081-001, County of Tuolumne and Turlock Irrigation District
Project No. 9990-001, Clavey River Hydroelectric Company

CAP-8.
Docket No. EL87-9-000, Electric Consumer Protection Act

CAP-9.
Project No. 6432-001, Liberty County, Montana, the Town of Chester, Montana and MRR

CAP-10.
Docket No. QF86-902-001, McKee Products, Incorporated

CAP-11.
Docket Nos. ER88-273-00 and ER86-694-001, New England Power Pool

CAP-12.
Docket No. ER88-304-001, Niagara Mohawk Power Corporation

CAP-13.
Docket No. EL87-65-001, Minnesota Power & Light Company and Northern States Power Company (Minnesota)

CAP-14.
Docket No. ER80-363-010, Delmarva Power and Light Company

CAP-15.
Docket No. EL87-45-001, The Cities of Marshall, Blue Earth, Mountain Lake, St. James, and Saulk Centre, Minnesota and Hillsboro, North Dakota v. Northern States Power Company—Minnesota

CAP-16.
Docket No. ER87-599-001, Gulf States Utilities Company

CAP-17.
Docket No. ER87-667-001, Gulf States Utilities Company

CAP-18.
Docket Nos. ER86-645-001, ER87-140-001, ER87-159-001 and ER87-160-001, Boston Edison Company

CAP-19.
Docket No. ER88-189-001, Detroit Edison Company

CAP-20.
Docket Nos. E-7777-000 (Phase II), P-2735-001, P-1988-003 and P-233-006, Pacific Gas and Electric Company

CAP-21.
Docket No. EL87-55-000, City of Holyoke Gas and Elecric Department, City of Westfield Gas and Electric Light Department, Marblehead Municipal Light Department, Middleborough Municipal Gas and Electric Department, North Attleboro Electric Department, Peabody Municipal Light Plant, Shrewsbury Electric Light Department, Templeton Municipal Light Plant, Town of Boylston Municipal Light Department, Town of Hudson Light and Power Department, Town of Littleton Municipal Light and Water Department, Town of Wakefield Municipal Light Department and West Boylston Municipal Lighting Plant v. Boston Edison Company

CAP-22.
Docket No. EL87-14-000, City of Vernon, California v. Southern California Edison Company

CAP-23.
Docket No. EL87-32-000, North Arkansas Electric Cooperative, Inc. v. Arkansas Power & Light Company

CAP-24.
Docket Nos. EL88-3-000 and EL87-56-000, Commonwealth Electric Company v. Boston Edison Company

Consent Miscellaneous Agenda

CAM-1.
Project No. FA87-63-001, Virginia Electric and Power Company

CAM-2.
Project No. RM88-20-000, Five-year Take-or-pay Make-up Provisions in Natural Gas Producer-Pipeline Contracts

Consent Gas Agenda

CAG-1.
Docket No. TA88-6-51-000, Great Lakes Gas Transmission Company

CAG-2.
Docket Nos. CP81-107-026 and CP83-403-009, CNG Transmission Corporation

CAG-3.
Docket Nos. RP88-133-001 and TQ88-28-001, Panhandle Eastern Pipe Line Company

CAG-4.
Docket Nos. RP88-154-001 and TQ88-1-37-001, Northwest Pipeline Corporation

CAG-5.
Docket Nos. RP88-166-000 and RP88-166-000, Raton Gas Transmission Company

CAG-6.
Docket No. TA88-3-23-000, Panhandle Eastern Pipeline Company

CAG-7.
Docket Nos. RP88-80-001 and 003, Texas Eastern Transmission Corporation

CAG-8.
Docket No. RP88-96-001, Southern Natural Gas Company

CAG-9.
Docket No. RP87-70-009, East Tennessee Natural Gas Company

CAG-10.
Docket No. RP88-63-002, Northwest Pipeline Corporation

CAG–11.
Docket Nos. RP86–94–005 and RP86–94–006, Sea Robin Pipeline Company
CAG–12.
Docket No. RP88–94–003, Natural Gas Pipeline Company of America
CAG–13.
Docket Nos. RP85–177–053 and RP85–176–010, Texas Eastern Transmission Corporation
CAG–14.
Docket No. TA88–3–43–001, Williams Natural Gas Company
CAG–15.
Docket No. RP85–122–008, Colorado Interstate Gas Company
CAG–16.
Docket No. RP88–80–002, Texas Eastern Transmission Corporation
CAG–17.
Docket No. RP87–61–002, Eastern Shore Natural Gas Company
CAG–18.
Docket Nos. CP86–401–009, CP87–354–003 and CP87–393–003, Southern Natural Gas Company
CAG–19.
Docket No. RP88–88–002, Panhandle Eastern Pipe Line Company
CAG–20.
Docket No. TA88–5–51–001, Great Lakes Gas Transmission Company
CAG–21.
Docket No. RP88–76–001, Tennessee Gas Pipeline Company
CAG–22.
Docket No. TA88–3–49–001, Williston Basin Interstate Pipeline Company
CAG–23.
Docket No. RP88–82–002, Transcontinental Gas Pipe Line Corporation
CAG–24.
Docket Nos. TA81–1–21–028, *et al.* and RP87–55–002, Columbia Gas Transmission Corporation
CAG–25.
Docket No. RP88–43–001, Columbia Gas Transmission Corporation
CAG–26.
Docket No. RP88–56–002, Columbia Gas Transmission Corporation
CAG–27.
Docket No. CP83–291–002, Natural Gas Pipeline Company of America
CAG–28.
Docket No. RP87–46–000, Mountain Fuel Resources and Southwest Gas Corporation v. Northwest Pipeline Corporation
Docket Nos. RP85–13–016, TA86–4–37–003 and TA87–4–37–002, Northwest Pipeline Corporation
CAG–29.
Omitted
CAG–30.
Docket No. RP88–78–001, Transwestern Pipeline Company
CAG–31.
Docket No. TA85–1–53–005, KN Energy, Inc.
CAG–32.
Docket Nos. RP86–51–000 and RP86–164–000, Northwest Pipeline Corporation
CAG–33.
Docket Nos. RP86–52–006, RP88–52–007 and RP86–109–003, Kentucky West Virginia Gas Company
CAG–34.
Docket Nos. RP86–52–000, 001 and RP86–109–000, Kentucky West Virginia Gas Company
CAG–35.
Docket No. OR88–4–000, KK Appliance Company v. Mid-America Pipeline Company
CAG–36.
Docket No. ST88–1898–000, Wintershall Pipeline Corporation
CAG–37.
Docket No. ST88–1–000, Arkansas Western Gas Company
CAG–38.
Docket No. ST88–1421–000, Transok, Inc.
CAG–39.
Docket No. RI87–553–001, OXY USA Inc.
CAG–40.
Docket No. CI87–680–001, Shell Oil Company, Shell Offshore Inc. and Shell Western E & P Inc.
CAG–41.
Docket Nos. CI86–637–005 and CI86–638–002, ANR Pipeline Company
CAG–42.
Docket No. IN86–5–008, Mobile Exploration and Producing North America, Inc.
CAG–43.
Omitted
CAG–44.
Docket No. CP88–146–001, Placid Oil Company
CAG–45.
Docket No. CP87–174–001, Panhandle Eastern Pipe Line Company and Trunkline Gas Company
Docket No. CP87–455–001, KN Energy, Inc.
CAG–46.
Docket No. CP88–2–001, Northern Natural Gas Company, Division of Enron Corp.
CAG–47.
Docket No. CP83–211–002, Columbia Gulf Transmission Company
CAG–48.
Docket No. CP87–106–002, Midwestern Gas Transmission Company
CAG–49.
Docket No. CP87–547–000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–50.
Docket No. CP87–43–000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–51.
Docket No. CP87–195–000, CNG Transmission Corp.
CAG–52.
Docket No. CP87–369–000, Lone Star Gas Company, a Division of ENSERCH Corporation
CAG–53.
Docket No. CP88–202–000, Columbia Gas Transmission Corporation
CAG–54.
Docket No. CP88–112–000, Northern Natural Gas Company, a Division of Enron Corp.
CAG–55.
Omitted
CAG–56.
Docket No. CP88–96–000, CNG Transmission Corporation
CAG–57.
Docket No. CP88–56–000, United Gas Pipe Line Company v. Southern Natural Gas Company
CAG–58.
Docket No. CP88–142–000, Columbia Gas Transmission Corporation, Complainant v. Louisiana Intrastate Gas Corporation, Respondent
CAG–59.
Docket No. IS87–14–000, *et al.*, Buckeye Pipe Line Company

I. Licensed Project Matters

P–1.
Project No. 2959–000, City of Seattle, Washington
Project No. 5305–001, Western Power Inc.
Project No. 5853–000, Western Hydro Electric Inc.
Project Nos. 6220–001 and 6221–000, Weyerhauser Company
Project No. 6310–000, Gulf Industries, Inc.
Docket No. EL–85–19–101, Snohomish River Basin, CIAP. Applications for license for projects located in the Snohomish River Basin, Washington.

II. Electric Rate Matters

ER–1.
Docket No. EF87–2011–003, United States Department of Energy—Bonneville Power Administration. Order on rehearing addressing the scope of the Commission's jurisdiction to review rates under section 7(k) of the Northwest Power Act.
ER–2.
(A) Docket No. EL87–53–001, Orange and Rockland Utilities, Inc., Rockland Electic Company and Pike County Light & Power Company. Order on rehearing addressing whether states can impose rates exceeding avoided cost on purchases from qualifying facilities.
(B) Docket No. RM88–6–000, Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities and Interconnection Facilities.
ER–3.
Docket No. ER87–34–001, Metropolitan Edison Company. Opinion and order on initial decision concerning Tax Reform Act of 1986.
ER–4.
Docket No. EL87–30–001, Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company and Holyoke Power and Electric Company. Opinion and order determining whether the existing return on equity components of the companies' formula rates are just and reasonable.
ER–5.
Docket No. EL88–10–000, Industrial Cogenerators v. Florida Public Service Commission. Order on complaint concerning right to receive interruptible, back-up maintenance and supplemental power under section 210(h) of the Public Utility Regulatory Policies Act of 1978.
ER–6.
Docket No. EL86–5–000, Commonwealth Electric Company v. Boston Edison Company
Docket No. EL88–6–000, Boston Edison Company v. City of Holyoke Gas and Electric Department

Docket No. EL88-7-000, City of Holyoke Gas and Electric Department v. Boston Edison Company. Order on complaints.

Miscellaneous Agenda

M-1.
Docket No. RM88-22-000, Accounting for Phase-In Plans. Notice of Inquiry.

M-2.
Reserved

M-3.
Reserved

M-4.
(A) Docket No. GP84-23-027 (Phase II). Stowers Oil & Gas Company, A & R Operating Co., Alamac Oil Company, Aspen Petroleum, Inc., Bink, Inc., Caddo Petroleum Caprock Engineers, Inc., Dahalo Lease Corporation, Energy-Agri Products, Inc., Ezekiel Energy, The Harlow Corporation, Judy Oil Company, Kaari Oil Company, Inc., Kim Petroleum Co., Inc., Komanche Oil & Gas, Lear Oil & Gas, Inc., Lucky Bird Petroleum, Inc., Magnet Oil, Inc., Meyer Farms, Inc., Dennis Mills Enterprises, Inc., Omega Energy, Panhandle Energy Corp., Panstar Oil & Gas, Inc., Prairie Oil Company, Raven Energy, Inc., Security Petroleum, Drilling, Inc., Sharon Lease Oil Co., Stowers Oil & Gas Company, Tri-Ex Oil & Gas, Inc., Tumble Weed Production Co., Vanderburg Exploration Co., Inc., Vanderburg Production, Inc., Walker Operating Corporation, Bob Wallace Oil, Inc., J. B. Watkins, Wy-Vel Corp., Zena-B Oil & Gas, Inc. and 3 W Oil, Inc. Opinion and order on initial decision (Phase II).
(B) Docket No. GP86-51-000, Northern Natural Gas Company, Division of Enron Corp. v. Cabot Pipeline Corporation and Texaco Producing Inc. Order on complaint.

I. Pipeline Rate Matters

RP-1.
(A) Docket No. RP82-56-020, Northwest Pipeline Corporation. Order on rehearing concerning gathering or transmission services.
(B) Docket Nos. RP85-206-036 and RP85-206-039, Northern Natural Gas Company, Division of Enron Corp. Concerning Commission jurisdiction over gathering rates and Part 284 requirement that gathering rates are separately stated in the pipeline's tariff.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

P-1.
Docket Nos. CP87-479-000 and CP87-480-000, Wyoming-California Pipeline Company. Declaratory order on non-environmental issues.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-13388 Filed 6-9-88; 3:24 p.m.]
BILLING CODE 6717-01-M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 1:00 p.m., Thursday, June 9, 1988.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (377-6679).

MATTERS TO BE CONSIDERED:

Investment Portfolio Policy and Accounting Guidelines

Nadine Y. Washington,
Assistant Secretary.

[FR Doc. 88-13207 Filed 6-9-88; 9:48 am]
BILLING CODE 6720-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 8, 1988.

TIME AND DATE: 10:00 a.m., Wednesday, June 15, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Southern Ohio Coal Company*, Docket No., WEVA 86-190-R, etc. (Issues include whether the judge erred in vacating a withdrawal order which alleged a violation of a notice to provide safeguards.)
2. *Kaiser Coal Corporation of Sunnyside*, Docket No. WEST 86-225-M. (Issues include whether the judge erred in finding a violation of 30 CFR § 75.205.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629 / (202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 88-13361 Filed 6-9-88; 1:53 pm]
BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, June 16, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed preemption determinations under Regulation CC (Availability of Funds and Collection of Checks) regarding funds availability laws of Illinois, Maine, and New York.

Discussion Agenda

2. Proposed 1988-1989 fee schedules for Federal Reserve check collection and new returned check services.
3. Publication for comment of proposed amendment to Regulation CC (Availability of Funds and Collection of Checks) to restrict certain delayed disbursement practices.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: June 8, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-13336 Filed 6-9-88; 10:59 am]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Thursday, June 16, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of real property by a Federal Reserve Bank.
2. Building proposals regarding the Charlotte Branch of the Federal Reserve Bank of Richmond.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: June 8, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-13337 Filed 6-9-88; 10:59 am]

BILLING CODE 6210-01-M

POSTAL SERVICE

(Board of Governors)

Addition of Item to the Agenda of June 6, 1988, Meeting

During its June 6, 1988, meeting, the Board of Governors of the United States Postal Service voted to add to its agenda consideration of a filing with the Postal Rate Commission for an opinion and recommended decision concerning a proposed amendment to the Domestic Mail Classification Schedule to provide for the Postal Service to issue regulations to prevent non-daily publications from mailing total market coverage issues at second-class rates.

By unanimous vote, the Board determined, in accordance with 5 U.S.C. section 552b(e)(2), that Postal Service business required that the matter be considered at this meeting even though the item had not been on the agenda of the meeting as originally announced in the Federal Register (see 53 FR 19386, May 27, 1988) and no earlier public announcement of the change was possible.

Requests for information concerning the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 88-13350 Filed 6-9-88; 12:34 pm]

BILLING CODE 7710-12-M

federal register

Monday
June 13, 1988

Part II

Education Department

34 CFR Part 670

Summer Intensive Language Institutes Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 670

Summer Intensive Language Institutes Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations for the Summer Intensive Language Institutes Program, which is authorized by Section 605 of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99-498. The proposed regulations provide the framework for the operation of summer intensive language institutes and for fellowships for students enrolled in the institutes.

DATE: Comments must be received on or before August 12, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Joseph F. Belmonte, Center for International Education, Room 3054, ROB-3, U.S. Department of Education, Washington, DC 20202. A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte; Telephone: 202-732-3283.

SUPPLEMENTARY INFORMATION: The Secretary is authorized to provide grants to institutions of higher education or combinations of institutions to establish and conduct summer intensive language institutes. The summer institutes are designed to meet the need for intensive language training of advanced foreign language students and, through pre-service and in-service instruction, the professional development and improved language needs of language teachers. The foreign languages taught must be critical to the national economic and political future or must be "neglected" foreign languages, i.e., languages that are not commonly taught but that are important to the nation's economic and political relations.

A summer institute shall provide, during a period of not less than six weeks, intensive foreign language instruction. The content of the intensive instruction provided at the summer institute must be equal to at least one academic year's worth of non-intensive language instruction offered by the institution operating the summer institute. Summer institutes may provide full-time instruction, or part-time instruction in conjunction with instruction provided by a National Resource Center described in 34 CFR Part 656. In either case, the total offering should equal one academic year. Finally, summer institutes may provide stipends to individuals undergoing instruction.

No funds have been appropriated for this program. In the event that funds are appropriated, these regulations would be needed to implement Section 605 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986, Pub. L. 99-498.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The applicants would be higher education institution with enrollments well over 500 and would thus not be considered small entities.

Paperwork Reduction Act of 1980

Section 670.21 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3054, General Services Administration Building, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except for Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Education Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 670

Colleges ard universities, Education, Fellowships, Foreign Languages, Grant program—education, Reporting and recordkeeping requirements, Testing, Training.

(Catalog of Federal Domestic Assistance Number not yet assigned)

Dated: February 22, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 670 to read as follows:

PART 670—SUMMER INTENSIVE LANGUAGE INSTITUTES PROGRAM

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

Subpart D—What Conditions Must Be Met by a Grantee?

Authority: 20 U.S.C. 1124a, unless otherwise noted.

Subpart A—General

§ 670.1 What is the Summer Intensive Language Institutes Program?

(a) Under the Summer Intensive Language Institutes Program, the Secretary awards grants to establish and operate summer institutes that provide intensive instruction in foreign languages to advanced foreign language students and foreign language teachers. The foreign languages taught at an institute must be languages that are either critical to the economic and political future of the United States or generally neglected.

(b) A grantee under this program may use grant funds to pay stipends to individuals undergoing training at the summer institute.

(Authority: 20 U.S.C. 1124a)

§ 670.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education may receive a grant to establish and operate a summer institute.

(Authority: 20 U.S.C. 1124a)

§ 670.3 What is a summer institute and what activities must each carry out?

(a)(1) An institution operating a summer institute under this part shall provide, during a period of not less than six weeks, intensive foreign language instruction that is equal to at least one academic year's worth of language instruction that it offers on a nonintensive basis, in languages that are critical to the economic and political future of the United States or neglected languages, i.e., languages that are not commonly taught but are important to the nation's economic and political relations.

(2) The institution may provide the intensive foreign language instruction on a full-time basis, or on a part-time basis in conjunction with instruction provided by a National Resource Center described in 34 CFR Part 656.

(b)(1) An institution operating a summer institute under this part shall provide its intensive foreign language instruction to advanced foreign language students, language teachers, or both advanced foreign language students and foreign language teachers.

(2) If the institution operates a summer institute that provides intensive instruction to foreign language teachers, the institution shall meet the professional development and improved language needs of those teachers.

(c) An institution operating a summer institute under this part may use a portion of the grant funds it receives to provide stipends to individuals undergoing training at the institute in accordance with § 670.31.

(Authority: 20 U.S.C. 1124a)

§ 670.4 What regulations apply to the Summer Intensive Language Institutes Program?

The following regulations apply to this program:

(a) 34 CFR Part 655.

(b) The regulations in this Part 670.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions That Apply To Department Regulations) and 34 CFR Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1124a)

§ 670.5 What definitions apply to the Summer Intensive Language Institutes Program?

The following definitions apply to the regulations in this part:

(a) The definitions in 34 CFR 655.4.

(b) The definitions in 34 CFR 657.6.

(c) "Critical foreign languages" means languages designated by the Secretary at 50 FR 31412 on August 2, 1985 as critical to national security, economic, or scientific needs.

(Authority: 20 U.S.C. 1124a)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 670.20 How does the Secretary evaluate an application under the Summer Intensive Language Institute Program?

(a) The Secretary evaluates an application for a grant to establish and operate a summer institute under the criteria in § 670.21.

(b) In general, the Secretary awards up to 100 possible points for these criteria. However, if the Secretary establishes one or more priorities under § 670.22, the Secretary awards up to 120 possible points.

(c) The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1124a)

§ 670.21 What selection criteria does the Secretary use to select a grantee?

The Secretary uses the following criteria in evaluating applications for grants to establish and operate Summer Intensive Language Institutes:

(a) *Plan of operation.* (10) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (20) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c)

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (10) (See 34 CFR 655.31(e))

(f) *Quality of the institute's instructional program.* (25) The Secretary reviews each application to determine—

(1) The quality of the summer institute's language training program;

(2) The extent to which the evaluation of student progress truly measures proficiency against a proficiency scale and not simply time-in-class; and

(3) The extent to which the summer institute employs a sufficient number of scholars or teaching faculty to enable it to carry out its instruction.

(g) *Need and potential impact.* (20) The Secretary reviews each application to determine—

(1) The extent to which the proposed activities serve national needs;

(2) The potential impact of the proposed project in improving the knowledge of languages at the national level; and

(3) The extent to which the summer institute's plans for selection and training of individual participants will result in an approved supply of specialists in the languages being taught in the summer institute.

(h) *Degree to which priorities are served.* (20) If the Secretary establishes one or more priorities under the provisions of § 670.22, the Secretary considers the degree to which those priorities are being served.

(Authority: 20 U.S.C. 1124a, 1132)

§ 670.22 What priorities may the Secretary establish?

(a) The Secretary may each year establish priorities for the funding of Summer Intensive Language Institutes from among the following:

(1) Particular foreign languages to be taught.

(2) Levels of language instruction, such as introductory, intermediate, or advanced.

(3) Any combination of the priorities in paragraphs (a) (1) and (2) of this section.

(b) The Secretary announces any priorities in the application notice for the program published in the **Federal Register.**

(Authority: 20 U.S.C. 1124a)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 670.30 What are allowable costs?

(a) *Allowable costs.* Allowable costs under a grant awarded for a summer

institute include, but are not limited to, the costs of—

(1) Faculty and staff salaries;

(2) Teaching materials;

(3) Travel to bring faculty members to and from the summer institute; and

(4) Stipends to individuals undergoing instruction at the summer institute.

(b) *Limitation on allowable equipment costs.* A grantee may not use more than five percent of grant funds for equipment.

(Authority: 20 U.S.C. 1124a)

§ 670.31 How are stipends paid to individuals?

(a) *Stipends.* A grantee operating a summer institute may use grant funds to pay a stipend to an individual who—

(1) Is accepted for enrollment or is enrolled at the institute;

(2)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States; or

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands;

(3) Has the language background necessary to successfully complete the intensive instruction provided by the summer institute, and

(4)(i) If a foreign language student, demonstrates academic achievement in the language being taught by the summer institute as indicated by his or her grade point average or by a standardized competency-based test; or

(ii) If a foreign language teacher, teaches the language being taught at the summer institute.

(b) *Stipend amount.* If a grantee awards a stipend, the stipend amount may not exceed an amount that equals the sum of tuition and fees charged by the summer institute and a subsistence allowance approved by the Secretary and announced in the application notice in the Federal Register. The Secretary may approve a subsistance allowance within a range from $1,250 to $2,500.

(c) *Stipend conditions.* (1) An institution operating a summer institute may disburse stipend payments as it determines best meets the needs of the stipend holder.

(2) An institution operating a summer institute may not pay any portion of a stipend to an individual who is no longer enrolled and no longer in good standing at the institute.

(Authority: 20 U.S.C. 1124a)

[FR Doc. 88-13065 Filed 6-10-88; 8:45 am]
BILLING CODE 4000-01-M

Federal Register

Monday
June 13, 1988

Part III

Department of Labor

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; H-2A Program Handbook; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; H-2A Program Handbook

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Employment and Training Administration (ETA), Department of Labor, has issued the following handbook to ETA regional offices and to State employment service agencies containing procedures for administering the temporary alien agricultural labor certification ("H-2A") program. The handbook is published below for information of all interested parties. Certain documents contained in the handbook, but published elsewhere (such as regulations), as well as the appendices of the handbook, have been omitted in the reproduction below.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, Suite N-4456, 200 Constitution Avenue NW., Washington, DC 20210-0001. Telephone: 202-535-0165 (this is not a toll-free number).

Signed at Washington, DC, this 7th day of June, 1988.

Robert A. Schaerfl,

Director, U.S. Employment Service.

Directive: ETA Handbook No. 398
To: Regional and State Offices
From: Donald J. Kulick, Administrator, Office of Regional Management
Subject: H-2A Program Handbook

1. *Purpose.* To transmit a handbook providing operating guidelines on the H-2A program.

2. *References.* Immigration Reform and Control Act of 1986 (IRCA); 20 CFR Part 655, Subpart B (H-2A regulations); 20 CFR Part 654, Subpart E, (ETA Housing Regulations); 20 CFR Part 653, Subpart B (Services to MSFWS) and Subpart F (Agricultural Clearance Order Activity); 20 CFR 655.0-655.000; 20 CFR Part 658 (Job Service Complaint System; Monitoring and Enforcement Regulations).

3. *Background.* On November 6, 1986, the President signed IRCA into law. The statute required that regulations governing the temporary alien agricultural worker H-2A program provisions be promulgated in interim final form no later than June 1, 1987. The regulations were published by the Department of Labor in the Federal Register on June 1 1987 at 20 CFR, Part 655, Subpart B. They were effective upon publication and govern all employer applications for temporary alien agricultural worker certifications filed on or after June 1. The public comment period on the interim final rule has expired, and it is probable that final regulations will be promulgated in 1988.

4. *The Handbook.* The handbook has three sections: (1) Operating procedures; (2) special items; and (3) appendices. It is intended to supplement the regulations by providing guidance to SESAs and Regional Offices involved in day-to-day program operations, and must be used in conjunction with the regulations. If future regulatory action results in changes to program operating procedures, the handbook will be amended to conform to the regulations. The handbook supersedes General Administration Letter No. 46-81, and changes #1 and #2 to General Administration Letter No. 46-81. The Employment and Training Administration intends to publish the handbook as an informational notice in the **Federal Register.**

5. *Action Required.* Regional and State Administrators should distribute the handbook to all staff who are or may be involved in H-2A program activities.

6. *Inquiries.* State agencies should direct inquiries to the appropriate Regional Office. Regional Offices should direct inquiries to the National Office, U.S. Employment Service, Attn: *TEEL.*

7. *Attachment.* H-2A Program Handbook.

Rescissions: GAL 46-81, Changes 1 and 2

Expiration Date: Continuing

ET Handbook No. 398

Preface

The H-2A program is authorized by the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA). The program establishes a means for agricultural employers who anticipate a shortage of domestic workers to apply for permission to bring into the United States nonimmigrant aliens to perform agricultural labor or services of a temporary or seasonal nature. Under the statute, the Attorney General, through the Immigration and Naturalization Service (INS), has the authority for approving an employer's petition to import foreign workers. Before the INS can approve an employer's petition, however, the law requires the employer to apply to the Department of Labor (DOL) for a certification that—

"* * * there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

"* * * the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed."

Under Federal Regulations at CFR Part 655, Subpart B, the Department of Labor has established procedures and a systematic process to acquire information sufficient to carry out the requirements of the law. The regulations provide the Department's methodology for the two-fold factual determination on the availability of domestic workers and of any adverse effect which would be occasioned by the use of foreign workers for particular temporary and seasonal agricultural jobs in the United States.

Most of the day-to-day operational responsibility for the program has been delegated in the regulations to the Regional Offices of the Employment and Training Administration and the State Employment Security agencies. Operating guidelines in the handbook are designed to supplement the regulations, and must be used in conjunction with them. Throughout the handbook appropriate sections of the regulations have been reproduced and placed adjacent to the text for ready reference.

(Table of Contents ommitted.)

Chapter I—Program Operating Procedures

A. Filing of Applications

1. Who Can Apply

a. *Employers in Agriculture.* Employers desiring to apply for temporary alien agricultural labor certification for the employment of H-2A workers must meet the definitional indicia of the regulations at 20 CFR 655.100. This part defines "agricultural labor or services" by incorporating the definitions for "agricultural labor" and "agriculture" appearing in Section 3121(g) of the Internal Revenue Code of 1954 (i.e., the FICA or Social Security tax definition) and Section 3(f) of the Fair Labor Standards Act.

b. *Employers with Temporary Jobs.* The regulations at 20 CFR 655.100(c)(2) include a definition for "seasonal or other temporary employment" which is consistent with MSPA provisions. The regulations also adopt for H-2A certification purposes a slightly revised definition of "temporary" employment. Except in unusual situations, temporary employment will be employment for less than twelve (12) months. It is the employer's need, and not the nature of

the job, which determines whether a position is, in fact, temporary.

The Regional Administrator (RA) must make a threshold determination as to whether the position is temporary as defined in the regulations. In considering whether the job is temporary, the RA will evaluate the employer's need for the worker. The unavailability of U.S. workers is not material to the RA's determination of whether the position is temporary.

In some circumstances, a temporary labor certification may be issued for a position which is permanent in nature so long as the employer's need for a worker in the position is temporary. For example, under the regulations, H–2A labor certification may be appropriate for a Ranch Manager to replace the employer's permanent manager who is incapacitated due to illness for a specified duration. Although a Ranch Manager is normally considered a permanent job, the employer's need for a replacement worker is temporary.

c. *Employer's Status.* Under the regulations, H–2A applications may be filed by sole employers or by joint employers, provided the definitional requirements of 20 CFR 655.100 are met. An association may file as a sole employer, as a joint employer with its member employers, or as an agent for its member employers.

All parties must sign the application (or authorize an agent to do so), and a letter signed by each member employer authorizing the association to act on its behalf must accompany the application.

The regulations do not preclude a farm labor contractor registered in accordance with MSPA from filing as the employer on an H–2A application. Instructions for handling these applications appear in Chapter II of the handbook.

d. *Agents.* An agent may file an H–2A application on behalf of an employer and sign on behalf of the employer. In such cases, the application must include a signed statement from the employer which authorizes the agent to act on the employer's behalf. The statement must also describe in detail the duties which the agent will perform on the employer's behalf.

e. *Return of Applications.* Applications filed for positions which are not "temporary or seasonal" or are not in "agricultural labor or services" as defined in the regulations cannot be processed under the H–2A provisions. These applications should be returned to the employer with a letter from the RA indicating that the application cannot be accepted for consideration under the H–2A regulations. The letter will briefly describe the reasons why the application is not appropriate for H–2A processing and must contain all the relevant information (including the statement of appeal rights) described in Section 655.106 (c) and (d) of the H–2A regulations. The RA will also notify the local office of the action taken.

In the event applications of this nature might be eligible for consideration under the H–2B or permanent labor certification provisions, Regional Offices should advise employers to this effect in their notices.

2. Where and How to Apply

a. *Filing with Regional Office; Simultaneous Copy to Local Office of the State Employment Service Agency (SESA)* [1]. An employer who desires to use nonimmigrant foreign workers in temporary or seasonal agricultural employment must file a temporary labor certification application, including a job offer for U.S. workers, with the RA having jurisdiction over the State of intended employment and with a simultaneous copy submitted to the local SESA office serving the area of intended employment. Submittal of an application to a SESA does not constitute "filing an application" for H–2A purposes. Applications involving multi-State employment within one Region may be processed according to this procedure, but multi-State employment which encompasses more than one Regional Office area of jurisdiction will require the establishment of special procedures as prescribed by 20 CFR 655.93.

Employers seeking H–2A certification must file an original of the application containing an original signature with the appropriate RA. A duplicate of the application must be submitted simultaneously with the local SESA office. An original signature is not required on the duplicate submitted with the local office.

b. *Mail or Personal Delivery.* The regulations require that applications be filed with the RA no less than sixty (60) days prior to the employer's first estimated date of need. The filing date is the date that the application is received in the Regional Office.

Employers may choose the means by which the application is delivered. However, employers should be urged to select a method of delivery which will ensure receipt of the application by the Regional Office by the required date. The means of delivery should also provide the employer with a record of the filing date of the application.

c. *Separate Submittal for Each Job/Occupation and Date of Need.* More than one alien may be requested on a H–2A application if the aliens are to perform the same type of services in the same occupation in the same area of employment. However, separate applications must be submitted for each distinct occupation for which labor certification is sought. A separate application is also required for each distinct date of need in the same occupation and activity, unless a master application is involved or the Regional Office believes the dates are so close together that separate applications would place an unreasonable burden on the employer.

If harvest workers are requested on an order, but the local office knows, or has reason to believe from prior experience, that the employer is also seeking to have those same workers perform duties in other occupations, such as cooks and cook helpers, the local office must advise the employer that separate H–2A applications for each occupational classification are required. The adverse effect standards and U.S. worker availability criteria will apply to those "support personnel" in accordance with the H–2A regulations.

3. What to Submit

a. *Application Forms.* The regulation at 20 CFR 655.101(b) provide general instructions applicable to the filing of H–2A applications. Employers should continue to use Forms ETA 750 (Application for Alien Employment Certification) and ETA 790 (Agricultural and Food Processing Clearance Order) until a new application form for H–2A purposes is issued by DOL. In the meantime, employers should delete the assurances contained in Part A of Form ETA 750. These assurances are inapplicable to the H–2A certification process. The application includes:

- Form ETA 750, Part A, Offer of Employment, completed and signed by the employer (or agent) describing the job for which H–2A labor certification is being sought, including the number of workers needed and the specific date the workers are needed.
- Form ETA 790, Agricultural and Food Processing Clearance Order, completed and signed by the employer (or agent) describing the job for which recruitment for U.S. workers will be conducted. The form, when submitted by the employer, is actually the

[1] Some SESAs have centralized their administration of the labor certification process. When this has been done, some of the specific responsibilities and procedures set forth for local offices could vary slightly from those described in this handbook. In these instances, local office staff should be guided by separate State/Central office implementing instructions, which must be approved by the Regional Office.

employer's job offer, and does not constitute a clearance order at this point in the process. The clearance order is prepared and submitted to the Regional Office for approval by the SESA, as discussed in Section C of Chapter I of this handbook.

- A signed statement that the employer agrees to abide by the assurances required by the regulations at 20 CFR 655.103. This statement may be attached as an addendum to the application or included on Form ETA 790.
- A statement describing the employer's positive recruitment plan. The plan may be attached as an addendum to the application or included at Item 21 of Form ETA 750, Part A.
- If the application is filed by an agent on behalf of the employer, the signed authorization statement as described in the regulations at 20 CFR 655.101(a)(2).
- If the employer's housing does not yet meet applicable standards, a request for conditional access into the intrastate or interstate clearance system as described in the regulations at 20 CFR 654.403(a).
- If the application is filed by an association, a statement identifying whether the association is a sole employer, joint employer, or agent for its employer members. Documentation to verify the status of the association is required, as is a list of the names and addresses of each member who will employ H–2A workers.

Employers' agents and joint employer associations may submit "master" applications covering virtually identical job opportunities available with a number of employers. Identical job components would normally include such items as description of work to be performed, hours of work, pay, and benefits. Job components which normally differ would include such items as employer's name, address and phone number, number of workers needed, and description of housing. Each job component which differs for each employer must be clearly identified as such in the "master" application package. Although "master" applications may be submitted and accepted by the RA under these circumstances, certifications must still be issued to individual employers, and such employers must be billed individually.

b. *Representations of Agents.* Since they are fully responsible for the accuracy of their agent's representations, employers should be cautioned not to sign blank application forms.

c. *Mandatory Information.* Certain information must be provided in order for the Department of Labor to make its certification determination on the acceptability of the application. All items on Forms ETA 750 and ETA 790 requesting identifying information about the employer, such as the employer's name, address, and telephone number, must be completed.

Further, local offices and RAs should caution employers that an incomplete application could result in delays in processing the employer's request for H–2A workers.

The employer's application cannot be processed unless the following items are completed:

- Form ETA 750, Part A, Items 4–13, 14, 15, 18(a), 18(b), 21, and 24; and
- Form ETA 790, Items 4, 5, 8, 9, 10, 11, 13, 14, 15, 17, and 20.

These items provide information regarding the job specifications and duration of employment and are essential to the labor certification determination process, including a determination on whether the application can be "accepted for consideration", as defined at 20 CFR 655.100(b).

4. When to Apply

a. *Normal Time Frames for Applying and Processing.* The time frames for the application and processing of H–2A certification requests are discussed in the regulations at 20 CFR 655.101. In general, H–2A applications must be filed with the RA and received in the Regional Office a minimum of sixty (60) calendar days prior to the employer's date of need for workers, and the RA must make the certification determination no later than twenty calendar (20) days before the date of need, except when special circumstances apply.

The RA must notify employers of deficiencies within seven (7) calendar days (including holidays and weekends) of the filing date of the application. *This is a statutory requirement.* The employer will be provided with five (5) calendar days from the date of the RA's notice to submit corrections and/or amendments. Corrections or amendments submitted and received by the Regional Office beyond five (5) calendar days will result in a day-for-day postponement of the RA's certification determination. If the fifth-day deadline established by the RA for the employer to submit modifications falls on a weekend or on a holiday when the office would normally not be open for business, the date for submittal of modifications should coincide with the next normal business day.

The sixty-day period will allow time for the RA to review the employer's application, obtain amendments to correct deficiencies, if necessary, and permit time for U.S. worker recruitment prior to the RA's certification determination. The regulations do not specify a minimum recruitment period prior to the issuance of labor certification. Therefore, RAs, local offices, and employers are urged to consult with each other prior to the sixty-day filing date in order to secure an acceptable application as early as possible.

If delays in submitting an acceptable application are directly caused by the State Employment Service Agency (SESA) or the Regional Office, the employer will not be required to extend the recruitment period beyond the date on which the RA must make a certification determination. If the RA has reason to believe that a State agency is not adhering to Employment Service (ES) regulations, the remedial action procedures at 20 CFR Part 658, Subpart H, will be applied.

Further, if the RA fails to notify the employer that the application is deficient and must be amended within the seven (7) calendar days allowed after filing, such delays will not count against the employer's entitlement to a determination twenty (20) days before the date of need, provided that the employer submits the required modifications no later than the five (5) calendar days prescribed in the regulations.

b. *Earlier Applications; Working with SESAs Encouraged.* The time frames of the regulations must be strictly observed in order to allow adequate time for the recruitment of U.S. workers. To avoid delays in issuing temporary labor certification, employers should be encouraged to consult with local office staff before submitting an application and to file applications early. SESAs also should be active in maintaining cooperative relationships with known H–2A employers during the off season in order to keep employers informed of new and emerging program developments and requirements. The period preceding the 60-day filing deadline should be used to provide technical assistance to employers in the preparation of their applications and in developing clearance orders which can be processed expeditiously once the formal filing and recruitment process begins. In addition, local offices must advise the RA of circumstances that may impact agricultural activities, such as an anticipated early harvest because of favorable weather conditions.

If an application is submitted earlier than the minimum 60-day period prescribed in the regulations, Regional Offices should process such applications according to the time frames specified for applications filed on the 60th day before date of need: e.g., review and return for amendment an unacceptable application within 7 calendar days and offer the employer 5 calendar days in which to resubmit the application. However, in no case should certification determinations be made earlier than 20 days before the date of need even though an acceptable application is filed more than 60 days before the date of need, and an employer's certification determination 20 days before the date of need should not be postponed because of an employer's failure to resubmit a timely modification, unless the resubmittal is not filed until later than 48 days before the date of need.

c. *Emergency Situations.* The regulations give the RA special authority to waive the sixty-day filing requirement in emergency situations. In order to qualify for a waiver, the employer:

- Must not have used temporary alien H–2 or H–2A workers in the prior year's agricultural season (see also Chapter I, A, 4, d); or
- Must demonstrate that good and substantial cause exists to warrant the special waiver by the RA. Good and substantial cause may include unforeseen changes in market conditions or unexpected unavailability of previously identified domestic workers whom the employer had planned to use in temporary or seasonal jobs. The regulations do not preclude an employer who did use H–2A (or H–2) workers the past year from being eligible for emergency certification consideration.

In such instances, the local office should notify the RA of the critical circumstances and help the employer expedite the certification process.

To grant a waiver, the RA should have information on what effort the employer has expended in conducting current or recent local recruitment. This could include newspaper, radio, and television advertising within the State and other potential areas of supply. The RA should be able to conclude that outreach or other reliable means of recruitment have failed to produce enough workers, or that workers who have been recruited are suddenly no longer available, and that further recruitment efforts will not produce enough workers in time to fill the employer's needs.

The employer must present a justification for emergency treatment along with the application. This justification should include the employer's explanation of recruitment efforts made (such as contacts with prospective workers or crew leaders), and a description of other circumstances impacting the employer's situation, such as special efforts made to assist former workers in obtaining Special Agricultural Worker (SAW) status or a description of unfulfilled expectations for Special Agricultural Worker (SAW) workers to be available.

The RA may consult the appropriate county extension agent for relevant information and advice on such matters as market conditions and may request that the SESA provide labor market information or obtain such information and forward it to the Regional Office. The employer, on his/her own, may also submit such supporting evidence from the county agent or any other representative of the U.S. Department of Agriculture (USDA). USDA representatives also may submit information to the RA on their own initiative.

The regulations further require that the RA have adequate opportunity to determine U.S. worker availability on an expedited basis before making an emergency labor certification determination. This could be accomplished by a Regional Office in a labor demand area making inquiries of Regional Offices in labor supply areas as to worker availability. If an emergency request appears to be justified, RA's should not unduly delay the processing of such requests by requiring extensive SESA recruitment through the clearance system, and should attempt to complete the processing in one or two weeks.

d. *First-Time Users.* Special provisions of the regulations apply to employers who apply for the first time for H–2A labor certification during the two-year period commencing on June 1, 1987, and ending on May 31, 1989. Employers who have applied previously under the H–2 program are not eligible for this special consideration. The filing and recruitment provisions applicable to other H–2A users have been relaxed to assist first-time applicants who need H–2A workers but lack familiarity with the regulatory system. Local offices are encouraged to assist these employers by providing the guidance needed to fulfill the requirements of the application process.

First-time H–2A employers are entitled to a labor certification determination no later than ten (10) days before the date of need provided that the employer has submitted an acceptable application and job offer which has been "accepted for consideration" according to the regulations at 20 CFR 655.100(b) no later than thirty (30) calendar days before the date of need. In processing such applications, the RA must have a reasonable opportunity to test the labor market prior to a labor certification determination.

This provision in the regulations is designed primarily for the novice employer who does not have the benefit of association membership or advice and assistance from people or entities knowledgeable in the labor certification process. While the RA may waive the filing minimum which applies to other employers, the RA must also determine that the employer has made a *good faith* effort to otherwise comply with the H–2A regulations.

5. Amendments to Applications

a. *Changes in the Number of Workers Requested.* Subject to the limitations described in the regulations and prior to the RA's certification determination, employers may amend their H–2A applications to increase the number of workers requested without additional recruitment. Employers must submit such requests in writing to the RA with a copy to the local office.

Employers requesting an increase which exceeds the twenty percent (or fifty percent for employers of less than ten workers) limitation described in the regulations must also explain in their request to the RA why the need for additional workers was unforeseen and indicate, if applicable, if the crop or commodity would be harmed if certification were delayed by the imposition of further recruitment. Regional staff should verify the employer's assertions concerning the crop or commodity status with the local office or the appropriate county extension agent.

If an employer requests an amendment which reduces the original number of workers, and if U.S. workers recruited against the employer's original labor needs are either in transit to or have arrived at the job site, the RA shall consider the reason for the request and any detriment which might occur to U.S. workers if the change is approved.

The employer is required to comply with the requirements for guaranteeing the first week of wages under 20 CFR 653.501, and should be reminded of this requirement under these circumstances.

b. *Change in Date of Need.* Employers may change the date of need stated in a job order by sending a written request to the RA, with a copy to the local office. The date of need cannot be changed without the RA's written approval.

In considering whether to approve a change in the date of need, the RA shall consider the reasons for the request and any detriment which might occur to U.S. workers who relied upon the original job order.

No change in the date of need is effective until approved by the RA. If a request for a change is made after U.S. workers have departed for the employer's place of employment, the RA may approve the change only upon receiving the employer's written assurance that all such U.S. workers will be provided free housing and subsistence until work becomes available. The employer must provide written information to support a finding that a change in the date of need is necessary. No telephone calls will be accepted.

The RA will respond promptly to the employer and will send copies of the determination to the SESA, which, in turn, will immediately notify all appropriate supply states by telephone followed up with written confirmation on ETA 795. An RA's denial of a request is not subject to further agency review.

c. *Minor Amendments.* Prior to the certification determination and with the RA's approval, employers may make minor modifications to their applications. Minor modifications consist of those changes which will not significantly affect the RA's certification determination, such as a change in the employer's street address, directions to the work site, referral instructions, meal charges, location of housing units, insurance carrier, or estimated amount of time to be spent in a particular crop activity when several activities are involved.

"Minor" modifications do not include modifications such as a change in the number of workers requested or a change in the date of need. Requests for minor changes must be made in writing addressed to the RA, with a copy to the local office. After RA approval in writing, the local office should prepare Form ETA 795 for distribution into the local, intra-, and interstate clearance systems. An RA's denial of a request of this nature is not subject to further agency review.

d. *Modifications after Certification—Terms and Conditions.* (See also Chapter I, Section F, 1) Employers may request modification of the terms and conditions of a certified job offer through written application to the RA. However, all post-certification modifications must be approved by the RA. An employer's assertion of workers' approval of requested changes has no relevance to the RA's decision to approve or disapprove a modification, and the RA's notice of disapproval is not appealable within DOL.

e. *Modifications after Certification—Time Extension.* Employers may request that the RA extend the period of labor certification. Applications to the RA may be made after fifty percent of the work contract period has elapsed.

An employer who seeks a one-time total extension of two weeks or less must apply directly to the INS. DOL cannot grant an extension in cases where INS has already approved an extension request.

Requests for extensions in excess of two weeks must be made in writing supported by documentation showing that the need for the extension was unforeseeable. Justifiable reasons to support a request for an extension might include such factors as weather conditions, unforeseen changes in market conditions or other factors beyond the employer's control. The RA may consider all available information, including local newspaper reports, in deciding whether to approve or deny the request.

The RA may verify the factors cited by the employer with the local office or the county extension agent, as appropriate. The RA may also ask the local office to consult with the county agent to obtain the required verification.

Extensions which, if granted, would extend the entire work period for twelve (12) months or more would run contrary to the temporary employment provisions of the regulations. Such extensions are, therefore, prohibited except in extraordinary situations. A determination as to what constitutes extraordinary circumstances will be made on a case-by-case basis. RAs should consult with the National Office when such circumstances occur.

There are no provisions for an employer to appeal within DOL a denial of a request for an extension. Nor are there appeal provisions for denials of requests for modifications to an application before certification or to the conditions of certification after certification has been granted.

6. Special Procedures for Special Circumstances

The Director, U.S. Employment Service, has the authority under the regulations to establish special procedures for processing and otherwise handling H-2A applications when employers can demonstrate that there is a justifiable need for such procedures. The Director also has the authority to establish special bi-weekly, weekly, or monthly adverse effect wage rates (AEWRs) for occupations characterized by other than a reasonably regular workday or workweek, such as range production of sheep or other livestock, where workers are alone in remote areas and are on call on a twenty-four hour basis, seven days a week.

Special procedures for sheepherder applications and for applications from custom combine operators have been in place for several years, and will continue to apply, subject to periodic updating and other adjustments as become necessary. Regional Offices and SESAs involved in handling those types of certification applications should continue to follow the procedures which have been established by the National Office. See FM No. 108-82 for sheepherder guidelines; procedures for custom combiners are transmitted by memorandum to Regions VI, VII, and VIII each year.

Employers who believe they have situations which call for special consideration may request such consideration by writing directly to: Director, U.S. Employment Service, Room N-4456, 200 Constitution Avenue NW., Washington, DC 20210, with a copy to the appropriate RA. Employers should be advised to specify in their letters precisely in what manner their particular employment situation differs from what normally occurs in agriculture, and precisely what adjustment to normal H-2A application processing procedures should be considered. There are no appeal rights within DOL of the Director's denial of a request for special procedures to be established.

B. Contents of Job Offers and Assurances

1. Job Offers

The application of an employer for temporary alien agricultural labor certification must include a job offer. The job offer must include the terms and conditions of employment which will be used in the recruitment of both U.S. and alien workers. As a minimum, the job offer must comply with minimum requirements established in the general agricultural clearance order regulations at 20 CFR Part 653, Subpart F, and must include certain benefits, wages, and working conditions which are needed in order to assure no adverse effect on U.S. workers similarly employed. The job offer or the Form ETA 790 must also include an agreement to abide by the assurances specified in the regulations at 20 CFR 655.103. A short statement to this effect is sufficient.

Certain components of the job offer also must conform to what is "prevailing", "normal" or "common"

practice in the area for the occupation. (See Chapter II, Section C.)

a. *Equivalent Treatment of U.S. and Alien Workers.* A basic premise of any labor certification determination is that the employer must offer U.S. workers at least the same opportunities, wages, benefits, and working conditions as those which the employer offers or intends to offer to non-immigrant foreign workers. If such terms and conditions of employment for the aliens have been prearranged through a worker agreement or contract, the employer should be required to furnish a copy of such contract with the application so that the RA may make a threshold determination on the equivalent benefit criteria.

(Furnishing a copy of such contract, however, does not constitute DOL approval of the terms and conditions in the contract, which are subject to further review, and a copy of the alien worker contract should not accompany a job order into clearance.)

At the same time, the employer may not require more of U.S. workers than is being required of the alien workers. For example, if the employer allows alien workers a certain period of breaking in or training time to achieve a required production standard, U.S. workers must be offered at least the same opportunity for reaching the standard without being discouraged.

b. *Housing.* Housing must be available for all non-commuting workers without charge to the workers. "Non-commuting" refers to workers who are not reasonably able to return to their residence within the same day. The job offer should provide a written description of the housing to be provided, including the location, type (dormitory, 5-room frame house, etc.), and number of workers and, where appropriate, family members who can be accommodated. The job offer shall clearly state that housing is provided at no cost to workers.

Family housing is to be made available and provided under certain circumstances. This depends upon a determination by the RA on the practices of employers in the area of employment to provide family housing for workers in the same occupation for which workers are requested. If it is the prevailing practice, as determined by a survey, then such family housing must be provided to workers with families who request such housing arrangements. (See also Chapter II, Section C.)

Housing arrangements may be basically three types, as provided for in the regulations:

• *Employer Provided Housing.* This is housing which is owned or leased through long-term arrangements by the employer for housing temporary agricultural workers. Such housing must comply with the full set of U.S. Department of Labor (DOL) standards (Occupational Safety and Health Administration [OSHA] or Employment and Training Administration [ETA], as applicable). (Also see Chapter II, Section D of handbook.)

If the housing is not in full compliance with such standards at the time of application, the employer must request in writing conditional access to the clearance system with assurance that such housing will be in full compliance at least thirty (30) calendar days before it is to be occupied.

This time frame may be waived for employers whose applications are accepted under emergency or first-time user provisions. However, the requirements to provide adequate housing which meets applicable standards cannot be waived, and certification under the emergency and first-time user provisions cannot be granted for an employer who is providing non-rental housing unless that employer's housing has been inspected and has been found to meet standards.

• *Arrangements for Other Housing.* Employers may make other arrangements for housing, such as rental or public accommodations, which meet standards for such housing. If there are no local or State standards, then such housing must meet the OSHA standards established in the regulations at 29 CFR 1910.142. The employer must provide documentation that such housing is in compliance with local or State standards, if this is the case. This may be in the form of a certificate from the local or State Department of Health office or a statement from the manager or owner of the housing. Local offices should check to be sure that such standards do, in fact, exist. If rental housing is obtained, the employer shall make all the arrangements and pay the rental fee directly to the owner or operator of the housing. Workers shall not be held responsible in any way for paying the rental cost of the accommodation.

Normally, rental housing would consist of a commercial, motel-type accommodation for transients. However, there is nothing to preclude an employer who does not actually own housing on his/her property from renting non-commercial housing from other individuals or entities for the purpose of housing temporary agricultural workers. When this occurs, the local or state standard principle for acceptability of the housing applies. However, SESA's and Regional Offices should examine such situations carefully to ensure that employers in an area are not attempting to circumvent DOL's housing standards by entering into reciprocal rental arrangements as a means to avoid pre-occupancy housing inspections. This is not permissible.

It is not permissible for workers to be required to make deposits for bedding, other items furnished in the accommodations, or for possible damage to accommodations. If workers are subsequently found to have been responsible for damage, the employers may require reimbursement for such damages as prescribed in the regulations. Such reimbursements, however, may not result in a worker's wages going below the Federal minimum wage, unless specifically authorized by FLSA regulations.

• *Range Housing.* Housing for workers primarily engaged in the range production of livestock must meet applicable standards per guidelines issued by DOL. Separate guidelines for sheepherder range housing are presented in FM No. 108–82, July 8, 1982. Other guidelines may be developed as appropriate.

c. *Workers' Compensation.* The job offer shall include a statement that workers' compensation will be provided at no cost to all workers in the occupation for which workers are being sought. The coverage and benefits provided will be at least equal to that provided under the State workers' compensation law for comparable employment. If coverage is in effect at the time of application, the employer will set forth in the application the insurance carrier and the policy number, or, if appropriate, proof of State law coverage. If coverage is not in effect, the employer is required to provide proof of coverage before a labor certification can be granted.

d. *Employer Provided Items.* The job offer shall describe all equipment which will be used by workers in performing the job opportunity. Work equipment may be picking bags, gloves, clippers, knives, files, etc. All such equipment shall be provided by the employer without charge (e.g., any deposit) *except* where the employer asserts that it is the common practice in the crop activity, the geographic area, and occupation for workers to provide such necessary tools and equipment. This would apply regardless of whether the employer subsequently reimbursed workers for such cost. In any event, the employer must clearly document that it is the common practice and obtain written approval in advance from the RA before this exception can be granted. Further,

the costs incurred by the worker in providing his/her own tools, supplies and equipment may not bring the worker's wages below the FLSA minimum for the workweek in which the cost is incurred.

e. *Meals.* The job offer shall specifically describe the arrangements made for feeding workers. If the employer has a centralized cooking and feeding facility, the employer must provide each worker with three meals per day. If the worker is working at the time of scheduled meal time, the job offer must describe the meal arrangement for feeding the worker; e.g., sack lunch, meal catered to field, etc.

In the absence of centralized facilities, the employer may arrange for meals to be provided to the workers by means of a catering service which will deliver meals prepared elsewhere to the employer's facility.

If centralized cooking and eating facilities are not available and catered meals are not provided, the employer must furnish at no cost to the workers convenient cooking and eating facilities of sufficient size and capacity (including utensils) which would enable workers to prepare their own meals. The job offer shall clearly describe such facilities and state that the facilities and necessary utensils are provided at no cost to the workers.

Where meals are provided, the job offer shall also state the daily charge for three meals. Such charge cannot exceed the amount permitted by the regulations at 20 CFR 655.102 or 20 CFR 655.111.

f. *Transportation.*

• *To Place of Employment.* The job offer should describe the arrangements by which the worker will travel to and from the place of employment. If it is the prevailing practice of non-H–2A employers in the area and occupation to advance transportation and subsistence costs (or provide such), the employer shall state in the job offer that transportation and subsistence cost will be advanced. Employers are also required to offer U.S. workers at least the same benefits which are provided H–2A workers; therefore, if transportation will be provided or advanced to H–2A workers, the same must be offered to U.S. workers. The amount of transportation cost will be determined to be at least that by the most economical and reasonable similar common transportation carrier.

If it is not the prevailing practice for non-H–2A employers to advance or provide transportation and subsistence, the job offer must stipulate that the worker will be paid the costs incurred by the worker for transportation and subsistence upon completion of fifty percent of the contract period.

In either case, the amount of the daily subsistence payment will be at least the amount the employer could charge the workers for meals under 20 CFR 655.102(b)(4) and for the time it would take for a worker to travel by the most economical and reasonable common transportation carrier to the job site.

If an employer is subject to FLSA, the employer may not make deductions (for transportation) from the worker's pay or require the worker to incur costs that would result in the pay falling below the Federal minimum wage, unless otherwise specifically authorized by FLSA regulations.

• *From Place of Employment.* The job offer should also state that transportation and subsistence benefits will be provided for workers who complete the work contract period. This means that the employer must offer to pay for (or provide) the worker's transportation home, or wherever the worker began the series of jobs culminating at the current place of employment. If the worker has obtained a subsequent job, but the subsequent employer has not offered to pay for (in advance or by reimbursement) the worker's transportation from the current place of employment to the other employer's place of employment, the current employer must offer to pay for (or provide) such transportation expenses. However, where the subsequent employer has offered to pay for (or provide), in advance or by reimbursement, the worker's transportation from the current place of employment to the subsequent employer's place of employment, the current employer is not required to pay for (or provide) such transportation.

This benefit does not apply to workers who voluntarily quit employment before the end of the contract or who are terminated for cause, providing the employer notifies the Job Service office of such action.

The same deduction or cost incurred limitation described above for incoming transportation applies to return transportation.

• *Between Living Quarters and Work Site.* The job offer shall clearly state that the employer will provide transportation from the place where the employer has provided housing to the actual work site and return at the end of the work day. Such transportation will be without cost to the worker, and the means of transportation shall meet all applicable safety standards.

This benefit is not applicable to local workers who are not eligible for employer-provided housing.

g. *Three-fourths Guarantee.* This provision guarantees the worker an opportunity to work for at least three-fourths of the number of hours in the work days during the period of the contract. The number of hours in the workday is that stated in the job offer. The period of the contract is from the first work day after arrival of the worker at the place of employment until the expiration date of the work contract. If the U.S. or H–2A worker is not offered the opportunity to work for three-fourths of such hours during this period, then the employer must supplement the pay of such worker as though the worker had actually worked such guaranteed employment.

If a worker is paid on a piece rate or other similar incentive system, the worker's average hourly piece rate earnings (if higher than the AEWR) will be used in determining the amount due under this guarantee.

The three-fourths guarantee will not apply to any H–2A worker who may be displaced by a U.S. worker under the fifty-percent rule.

h. *Record.* The job offer shall state that the employer will keep and maintain adequate and accurate payrolls and supporting records in accordance with the provisions of 20 CFR 655.102(b)(7). It is not necessary to describe in detail on the job offer the type of records maintained. Employers also may be required to maintain additional records which may be required by FLSA or MSPA.

i. *Hours and Earnings Statement.* The job offer should state that an hours and earnings statement will be given to each worker when the worker is paid. The statement must be in writing and must be given on a basis no less frequently than on pay day. The earnings records to be provided each worker may be a combination of daily records and a summary statement of earnings and deductions given at the time of actual payment. For example, a worker may be given a statement each day which would show:

• Name and payroll identification number;

• Work starting and ending time;

• Hours worked, including hours offered and actually worked (Note: The reason for not working hours offered should be explained either specifically or by a readily identifiable code.);

• Hourly rate or piece rate;

• If piece rate, the number of units produced; and

• Total earnings.

At the time the worker is actually paid, a check stub or statement may be given which would show:

- Gross wages;
- Itemization of all deductions for meals, Social Security, cash advances, etc. (Note: All deductions not required by law which may be made from worker's earnings must be specifically stated in the job offer.); and
- Net payment.

j. *Rates of Pay.* The job offer should clearly state the rate of pay either by the hour and/or by a piece rate per identifiable unit of production.

If the worker is to be paid by the hour, the rate stated must be at least the highest of the following wage rates:

- The adverse effect wage rate for the State;
- The prevailing hourly wage rate for the occupation in the geographic area of employment as established by a SESA prevailing wage survey which is verified by the National Office; or
- The legal federal or State minimum wage rate.

To cover situations in which the adverse effect wage rate might change during the contract period (usually March or April), the job offer should contain a statement that the employer will pay at least the adverse effect wage rate in effect at the time work is performed. An employer may state in the job offer/order that in the event DOL promulgates a new AEWR during the recruitment or work contract period which is lower than the current AEWR at the time of application, this lower AEWR will become the guaranteed minimum (unless there is a prevailing hourly rate which is higher than the AEWR). Absent this provision in the job order, the employer will not be permitted to pay a lower AEWR should one be published during the contract period.

If the worker is to be paid on a piece rate basis (price per identifiable and measurable unit of production), the job offer must state the piece rate. The unit of production must be clearly described; e.g., a field box of oranges (1½ bushels), a bushel of potatoes, an Eastern apple box (1½ metric bushels), a flat of strawberries (twelve quarts), etc.

The piece rate wage offer must be at least what is prevailing for the occupation and crop activity in the area of employment. For example, if a State agency survey determined that the prevailing wage rate was $.50 for picking 1½ bushels of oranges during the past season, the employer must offer at least this rate of pay on the job offer.

The job offer should also state that if a worker is paid on a piece rate basis and piece rate does not result at the end of the pay period in average hourly piece rate earnings at least equal to the amount the worker would have earned had the worker been paid at the *appropriate hourly rate,* the worker's pay shall be supplemented at that time so that the workers earnings are at least as much as the worker would have earned during the pay period if the worker has been paid at the appropriate hourly wage rate for each hour worked. For example, an employee works forty-two hours during a one-week pay period. The worker picked three hundred and fifty field boxes of oranges @ $.50 per box, with actual earnings of $175.00, or $4.16 per hour. The State AEWR is $5.00 per hour. Had he/she worked by the hour, the worker's earnings would be 42×$5.00=$210.00. Thus, the employee's pay must be supplemented by $35.00 at the end of this pay period.

In the above example, the AEWR is the appropriate hourly wage rate because no prevailing hourly wage rate has been determined by the SESA for the occupation and the area which is higher than the published AEWR. The "appropriate" hourly wage rate in most cases will be the published AEWR. However, if a SESA survey, which is verified by the National Office, results in a prevailing hourly wage rate for the occupation and the area which is higher than the published AEWR, this hourly rate would be the "appropriate" rate. In the event both the published AEWR and the verified prevailing hourly rate are lower than the FLSA minimum, the FLSA minimum will be the standard that must be used.

The job offer should also specify the standards of production for job retention of a worker. If an employer filed an H–2 application in 1977, the productivity standard on the current job offer can be no more than required by the employer in 1977 (or first year in the H–2 or H–2A program after 1977), unless the RA has approved a higher level subsequent to 1977. A new employer who files an application for labor certification for the first time after 1977 will be bound by productivity standards (existing at the time of application) normally required by other employers for the same crop activity in the same geographic area.

The RA may approve a higher minimum upon receiving substantive documentation from an employer in writing justifying a higher standard. Such documentation should show the increase is justified by technological, horticultural, or other labor saving means.

k. *Frequency of Pay.* The job offer shall clearly state the length of the pay period, and the ending day of the week of the payroll period and date (day of week following payroll ending) on which workers will be paid. An example of such an entry would be: "Workers will be paid each Friday for the weekly payroll period ending on the preceding Tuesday."

The employer must pay workers at least as frequently as what is prevailing for employers of similarly employed workers in the area of intended employment, but no less than twice monthly.

l. *Contract Impossibility.* The provision of the regulations at 20 CFR 655.102(b)(12) allows the employer to terminate the work contract of any worker(s) whose services are no longer required for reasons beyond the control of the employer. In the event of such termination, the employer will be bound by the three-fourths guarantee from the first work day after arrival to the date of termination.

If the employer is unable to work out a transfer of the worker to other comparable employment, the employer will be required to offer to return the worker at the employer's expense to the place from which the worker came to work for the employer in accordance with the regulations at 20 CFR 655.102(b)(5)(ii).

If the worker who is terminated under this provision has not been reimbursed for transportation to the job site in accordance with 20 CFR 655.102(b)(5)(i), the worker will be reimbursed for any transportation and subsistence due. If transportation was advanced and subsequently deductions were made from the worker's pay to cover costs, these deductions must be reimbursed to the worker and, if necessary, supplemented up to the inbound transportation level.

m. *Deductions.* The job offer shall specify all deductions not required by law. An employer subject to the Fair Labor Standards Act (FLSA) will not make deductions from pay which would bring the wage below the federal minimum for the work week unless authorized by the FLSA regulations.

n. *Copy of Work Contract.* If an employer develops a written contract between the employer and the worker, the contract must include the terms and conditions of employment specified in the regulations. A copy of such contract will be provided to the worker no later than the day on which the worker begins employment. In order to prevent any possible misunderstanding concerning the agreed upon contract, a sample work contract might be posted in a conspicuous location at the work site or housing facilities for workers. In the absence of a specific separate written work contract incorporating the terms and conditions of the job order, the

terms and conditions of the job order (which must include the requirements in the regulations) and application shall be the work contract, and a copy of the job order must be provided to the worker.

If a written work contract will be used, the job offer should so state, and a copy should be attached to the job offer if possible. (Furnishing a copy of such contract, however, does not constitute DOL approval of the terms and conditions of the contract which are subject to further DOL review.) If there is no written contract, the job offer may include a statement such as: "In the absence of a written contract, the terms and conditions of the clearance job order and application are to be the work contract between the employer and the worker so employed."

o. *Occupational Qualifications.* The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act (IRCA) of 1986, specifically directs that the qualifications for a job offer be appropriate and not be more than the normally accepted qualifications required by non-H–2A employers in "the same or comparable crops". The labor certification determination is based upon a fair test of the labor market for U.S. workers who are *able, willing, qualified* and *eligible* to perform the job for which nonimmigrant workers are requested.

RAs receiving H–2A applications (and local offices receiving copies) from agricultural employers should carefully examine any unusual qualifications imposed by the employer in the job offer. An expedited survey should be made of non-H–2A employers and information obtained as to the minimal qualifications necessary to perform the occupation for which certification is being sought.

In addition to obtaining information from the local office, the RA should examine sources of occupational information such as the *Dictionary of Occupational Titles.* Also, the RA may consult with the State extension service and appropriate representatives of the U.S. Department of Agriculture (USDA) in determining the appropriateness of qualifications. If the RA questions the appropriateness of a required qualification, the burden for proving that the qualification requirement is, in fact, necessary, rests with the employer.

2. Assurances

It will not be necessary for the job offer to include a recitation of the assurances called for in this section (or those in 653.501); nor is a separate signed assurances statement necessary. However, the employer must provide a statement in the job order similar to the following: "The employer agrees to abide by the assurances specified in the conditions of 20 CFR Part 655, Subpart B, including the regulations at 20 CFR 655.103." Although this general statement is acceptable for the job offer, Regional Office and SESA staff should be acquainted with each assurance called for in this section. A brief summary of each follows.

a. *Labor Disputes.* The job opportunity for which an alien worker is being sought must not be vacant because the former occupant is on strike or is being locked out in the course of a labor dispute. Nonimmigrant workers cannot be sought as a means of replacing workers who are no longer encumbering a position because they are involved in a labor dispute.

SESA staff should be alert as to any labor disputes which may involve agricultural employers who file, who had previously filed, or who have filed or have pending a temporary agricultural labor certification application or who have received such a certification. The facts concerning the labor dispute should be reported to the RA. As a minimum, the following facts should be reported:

- The issue(s) involved in the labor dispute;
- The occupation(s) directly involved, including the total number of workers involved in the dispute and the total number of workers employed in the occupation(s); and
- The date the labor dispute began.

When the RA has information on the existence of a labor dispute which could impact directly upon a labor certification determination, the RA must ensure that an official investigation is conducted. Chapter II, Section E of this handbook addresses steps that are taken in that type of situation.

b. *Employment-Related Laws.* The employer agrees to comply with all applicable federal, State, and local employment-related laws (including health and safety laws) and regulations during the period for which labor certification is granted.

It is not likely that a situation will arise when compliance with a local or State law or regulation will preclude compliance with a federal law or regulation, or *vice versa.* Normally, such statutes and regulations are constructed in a fashion which will permit at least minimal compliance with other relevant statutory and regulatory requirements. For example, some States have regulations limiting the maximum amount employers may charge workers for meals to an amount which is less then that permitted as maximum by the H–2A regulations. However, the H–2A regulations (20 CFR 655.102(b)(4)) prescribe that the maximum amount shall "*not be more than* * * * per day * * *"

In the highly unlikely event that SESA's or Regional Offices encounter situations where compliance with all applicable federal, State and local employment-related laws and regulations appears to be not possible, Regional Offices should consult with the National Office for advice and assistance.

If a State agency has reason to believe that the employer may be in violation of employment-related laws such as OSHA, MSPA or IRCA during a period covered by a labor certification, the facts should be reported to the RA for appropriate handling under the provisions of the regulation at 20 CFR 655.110. Such action shall not in any way impede prompt handling and resolution of any worker complaint filed pursuant to the regulations at 20 CFR Part 658, Subpart E.

c. *Rejection and Termination of U.S. Workers.* U.S. workers cannot be rejected for or terminated from employment for other than lawful job-related reasons. Lawful job-related reasons include failure to achieve productivity levels, malingering, or serious misconduct. The employer must report each situation when U.S. workers are refused employment or are terminated, for any reason, in writing to the local office. Local offices shall maintain a record of such actions for at least two years.

d. *Recruitment of U.S. Workers.* The employer agrees to engage in independent positive recruitment of U.S. workers until H–2A workers leave for the employer's establishment and to cooperate with the Employment Service (ES) system in recruiting U.S. workers.

e. *Fifty Percent Rule.* (See also Chapter I, Section F, 4.) This section states that the employer must continue to provide employment to any qualified and eligible U.S. worker who applies until fifty percent of the period of the work contract has elapsed. This requirement begins on the date that foreign workers depart for the employer's place of employment, which is when the employer's obligation to engage in positive recruitment ceases. The employer is required to notify the local office, in writing, of the exact date on which the H–2A workers depart for the employer's establishment.

The employer must keep an active job order on file until the "fifty percent rule" has been met. The expiration date of the local and agricultural clearance order

should also be adjusted to reflect the ending date of the fifty percent rule requirement. Of course, if the employer is willing to accept U.S. workers after this date, the local order (and the clearance order, if specifically agreed to) may remain open.

Note: This section does not apply to a "small" employer who certifies to the RA in the application that he/she did not use more than five hundred (500) man-days of agricultural labor during any calendar quarter in the preceding calendar year and is not a member of an association which has applied for labor certification on behalf of its members and has not "associated" with other H-2A employer-applicants under the regulations.

f. *Other Positive Recruitment.* (See also Chapter I, Section D and Chapter II, Section C.) Upon acceptance of the certification application of an agricultural employer, the RA will specify the recruitment effort which must be undertaken by the employer. This shall include specific positive recruitment efforts which are consistent with the efforts expended by non-H-2A agricultural employers of comparable or smaller size when they recruit domestic workers in the area of employment. The RA may require the employer to make efforts which are at least at the same level as the efforts which the employer has or will make to obtain H-2A workers in another country. The RA also has the authority to require the employer to engage in independent positive recruitment out of the area when the RA has specific, reliable, and current information that there is a potential supply of U.S. workers available elsewhere who, if recruited, would likely be able and willing to fill the job opportunities. Such information would normally be considered reliable if it were supplied by another Regional Office or a SESA, although other sources of information may be used.

Positive recruitment is in addition to the circulation of a clearance order through the ES system, and can only be required during the same period that a clearance order is being circulated. The obligation to engage in such positive recruitment efforts will end on the date that H-2A workers depart for the employer's place of work.

The employer must also make an effort to secure U.S. workers through farm labor contractors (crew leaders) where it is the prevailing practice of non-H-2A agricultural employers in the area of employment for the same occupation. The level of effort must be at least equal to that made by such non-H-2A agricultural employers.

Most crew leaders require an override for their services. The H-2A employer must also provide an override which is at least that provided by non-H-2A employers, except that employers are not required to offer an override that includes the provision of housing by the crew leader, since the employer must provide free housing in compliance with the regulations at 20 CFR 655.102(b)(1).

Further, where the employer has centralized cooking and eating facilities, the override offer does not have to contain a provision for this service to be provided by the crew leader.

The positive recruitment requirement is one of the major changes IRCA has made to the temporary agricultural labor certification program, and an employer's failure to conduct positive recruitment specified by the RA must, by statute, result in denial of certification. However, Regional Offices must exercise discretion by taking into account historical and recent recruiting efforts which have been made and must avoid requiring employers to engage in efforts which would likely prove futile.

g. *Retaliation Prohibited.* This section prohibits the employer (either directly or through another person) from engaging in retaliatory action against any person who has sought redress for perceived inequities under the provisions of the H-2A program or assists another person in doing so. This would include retaliatory action against a person who takes any of the following courses of action:

- Files a complaint;
- Institutes or causes legal proceedings to be instituted;
- Testifies or is scheduled to testify in a legal proceeding;
- Consults with an employee of a legal assistance program or an attorney;
- Complains to the employer or to a farm labor contractor; or
- Otherwise exercises or asserts on behalf of himself/herself or others any right or protection afforded by law and regulations.

h. *Fees.* (See also Chapter I, Section E.) Each employer to whom certification is granted in whole or in part must pay a fee for that certification. The fee is not required at the time of application, and fees are not charged for certification redeterminations.

When the RA or certifying officer makes the certification determination (usually twenty calendar days before the date of need), the certification notice will contain a statement indicating that the bill for the fee assessed for processing the application is attached. The fee must be paid within thirty days of the certification determination date.

Failure to pay the certification fee on a timely basis (within thirty days) could result in a finding by the RA that a substantial violation has occurred pursuant to the regulations at 20 CFR 655.110(a). This finding could result in a notice to the employer that a labor certification request will not be granted in the next year for a similar period of time.

C. Acceptance or Rejection of Applications

1. Time Frames

The regulations establish strict time frames within which the RA must notify employers of any deficiencies on their applications for H-2A labor certification. Employers face a correspondingly short time period within which they are required to respond to the RA or face day-for-day postponement of the labor certification determination.

In order for the RA to notify the employer of deficiencies within seven calendar days, procedures must be established to assure the expeditious review of the application upon receipt by the RA. RAs should not return applications for minor errors or deficiencies which have no material effect on the labor certification determination. Acceptance or rejection of an initial application should be determined by the acceptability of the components of the application directly related to worker recruitment and the prevention of adverse effect.

If minor revisions to the application are needed, they should be requested, to the extent possible, by telephone. Regional Offices should bear in mind that the employer's application submitted under the H-2A procedures is not required to have been previously reviewed by the SESA for completeness, and should not apply the same level of precision in reviewing the application which is applied to review of clearance orders submitted by the SESA.

2. Steps in Handling Applications

a. *Regional Office.* Employers must file applications for H-2A labor certification no less than sixty calendar days prior to their estimated dates of need by a means calculated to assure timely delivery and to provide the employer with a record that the application was received by the RA. The Regional Office must date stamp the application upon receipt, and may record the date in the appropriate block of the Endorsements Section of Form ETA 750.

The application must be reviewed as soon as possible after it has been filed. Regional staff may complete the suggested Checklist for Reviewing H–2A Applications which appears in the Appendices for this purpose. The suggested Checklist has been developed to include the steps that employers must take to correct deficiencies and may be used to notify employers of deficiencies in a rejection letter. If the Checklist is used as the basis for a rejection notice, the Regional Office should transmit the accompanying cover letter appearing in the Appendices.

In cases where Regional Offices have a number of applications filed at the same time, and some applications are acceptable while others are not, the applications which require rejection notices should be processed first, and such notices should be mailed before acceptable applications are processed and employers are sent written notices of acceptance. In view of time constraints, rejection notices may be handwritten.

Regional Offices should keep a log of H–2A labor certification activity. The log should record the employer's name, the occupation and number of workers requested, the date of need, the expected and actual certification dates, the date of acceptance, and the actual rejection dates.

b. *Local Offices.* Employers must file a duplicate copy of their H–2A application with the local SESA office serving the area of intended employment. Employers should be advised to select a means of delivery which will assure receipt of the application by the local office no later than sixty calendar days prior to the date of need.

The local office should date stamp the application upon receipt, and immediately prepare a local job order and an agricultural clearance order. When the clearance order has been prepared, the local office should forward a copy to the State office. The State office should begin to prepare the order for intrastate and interstate clearance and take the steps necessary to secure Regional Office approval of the clearance order so that it can be rapidly placed into clearance after the Regional Office accepts the employer's application for consideration and it has been determined that there are not sufficient local workers available.

Recruitment under the local order should begin immediately. The local office should review the job offer portion of the employer's application. If deficiencies are noted, the local office must report them to the RA. Notification by telephone is appropriate for this purpose.

Recruitment for intrastate and interstate workers may not begin until the SESA is notified that the application has been accepted and the clearance order has been approved by the RA. This notification may be made by telephone to the State office and later confirmed by the RA in writing with copies of the acceptance letter to the State and the local office. Due to reduced processing times, the State office should distribute the employer's clearance order into the intrastate and interstate clearance upon telephonic notification of the RA's acceptance.

Employers may amend their applications to correct deficiencies after rejection by the RA. Clearance orders which have been prepared by local offices must also be amended prior to intrastate and interstate recruitment. Local offices may use Form ETA 795 (Agricultural and Food Processing Clearance Memorandum) to report any amendments made to the original application. Form ETA 795 should be attached to the clearance order prior to intrastate and interstate distribution.

3. Acceptance

Clearance orders based on an H–2A job opportunity may not be distributed into the intrastate or interstate clearance system until they are reviewed and approved by the RA in accordance with the agricultural clearance order regulations at 20 CFR Part 653, Subpart F.

Although the regulations set forth no specific time period within which the RA must notify the employer that an application is acceptable, RAs should make every effort to assure that acceptance letters are transmitted in sufficient time for the employer and the ES to conduct an adequate test of the labor market prior to a certification determination.

If the application is filed in a timely manner and meets the adverse effect requirements of the regulations at 20 CFR 655.101–655.103, the RA must promptly notify the employer in writing using next-day delivery service with copies to the SESA. The RA should also notify the SESA by telephone that the employer's application has been accepted so that intrastate and interstate recruitment can commence without delay.

The RA acceptance letter must advise the employer of the specific recruitment obligations outlined in the regulations at 20 CFR 655.105(a). RAs may develop their own notifications or may use the sample letter contained in the Appendices of this handbook. In order to ensure a timely assessment of an employer's recruitment efforts and the results thereof, the RA's notice should require the employer to report on these efforts, preferably within three days of the certification determination date.

4. Rejection—Untimely Applications

Applications for H–2A certification which are received by the RA less than sixty days before the employer's first date of need must be rejected for lack of timeliness, unless the employer meets the guidelines for first time or emergency processing contained in the regulations at 20 CFR 655.101(c)(5) and 20 CFR 655.101(f).

The RA's rejection notice must be mailed no later than the seventh calendar day following the RA's receipt of the application using next-day delivery service. Employers whose applications have been rejected for lack of timeliness may follow the appeal or hearing provisions of the regulations or may refile the application with the RA with a later date of need in order to meet the sixty day filing requirement of the regulations. The RA's determination as to whether a refiled application is timely will be based on the date of the later submission.

5. Rejection—Adverse Effect

Applications which do not meet the adverse effect criteria of the regulations at 20 CFR 655.101–655.103 must be rejected within seven calendar days of filing. The RA's notification must state that the application cannot be accepted because the availability of U.S. workers cannot be adequately tested because the benefits, wages, and/or working conditions do not meet the adverse effect criteria of the regulations.

6. Notice of Rejection

The RA's notice to the employer that an application is unacceptable must be in writing and mailed no later than the seventh calendar day following the RA's receipt of the application, with copies to the SESA. RAs must mail rejection notices in a manner reasonably calculated to assure next day delivery, using commercial express delivery if appropriate.

In some instances, next day delivery may not be possible, and the RA may make special delivery arrangements with employers. For example, an employer may arrange to receive the notice in person at the Regional Office. Similarly, the RA may arrange for overnight delivery to the local or State office where the employer may personally receive the notice.

The employer must be specifically advised of the reasons why the application has been rejected, including

citations to the applicable regulations. The notice must offer the employer an opportunity to submit a modified application within five calendar days of the date of the RA's notice. RAs should specify the due date in the notice. In addition, the modifications necessary for an acceptable application must be specifically indicated in the RA's notice.

The RA's notice must also advise employers of their right to an expedited administrative review or a *de novo* hearing. Sample notices are included in the Appendices of the handbook.

The RA may not penalize an employer for delays which are not attributable to the employer. Therefore, an employer's certification date may not be delayed if the RA fails to make the required notification of unacceptability within seven calendar days. The RA's failure to make a timely determination will not cause the certification determination to be extended beyond 20 calendar days before the need, provided the employer's submittal of required modifications is timely.

7. Resubmission with Required Modifications

Employers must submit requested modifications within five calendar days following the date of notification or face day-for-day postponement of their certification date. The employer's obligation to submit modifications within five days is considered to have been met if the required modification notice is postmarked by the 5th day, and is operative even if the RA fails to notify the employer of unacceptability in a timely manner. In such instances, however, the RA may not delay the certification determination for any portion of the delay which was not attributable to the employer.

Employers must send modifications directly to the RA with a duplicate copy to the local SESA office. Upon receipt of its copy, the SESA should prepare Form ETA 795, (Agricultural and Food Processing Clearance Memorandum) containing the employer's modifications, attach it to Form ETA 790 which was previously prepared by the SESA based on the employer's initial submittal. The State agency must extend the modified job order into intrastate and interstate clearance as soon as it receives notice that the modified application has been accepted. RAs may telephone the State office with notification that the application has been accepted.

The employer's modified application must contain all the modifications required by the RA or it cannot be accepted. Modified applications which do not contain all of the changes should be returned to the employer. The employer should be informed that the modified application is unacceptable for consideration because it does not contain the necessary modifications, a certification determination will be further delayed by one day for each day's delay in receiving the modified application, and that this second (and any subsequent non-acceptance notice) is appealable under the regulations.

8. Appeals

Employers seeking expedited administrative review or a *de novo* hearing on the nonacceptance of an application must telegraph such requests to the Chief Administrative Law Judge within seven calendar days of the date of the RA's notice. A copy of the appeal or hearing request must also be sent to the RA. The request should contain any legal arguments which the employer believes will rebut the basis for nonacceptance of the application.

Upon receipt of notification that a request for expedited administrative review or a *de novo* hearing has been filed, the RA must immediately prepare an indexed certified copy of the case file and transmit it to the Chief Administrative Law Judge pursuant to the regulation at 20 CFR 655.112 (a)(1), notwithstanding the timeliness or untimeliness of the request. The RA must mail the appeal file by any means reasonably calculated to assure next day receipt by the Office of the Administrative Law Judges.

Address the appeal file to: Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street NW., Washington, DC 20036.

Every appeal file shall include the following:

- A memorandum of transmittal from the RA to the Chief Administrative Law Judge;
- A completed Form DL 1–126, Records Authentication Certificate, affixed with the seal of the U.S. Department of Labor, and signed by the records custodian and Regional authentication officer;
- An appeal index; and
- A paginated appeal file arranged in "reverse" chronological order, i.e., with the most recent document first.

RAs must also forward a copy of the appeal file by next day delivery to: Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Room N–2101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210

The Administrative Law Judge will act on the employer's request for expedited administrative review within five working days following receipt of the appeal file. The Administrative Law Judge may affirm, reverse, or modify the RA's decision, but may not remand the case file to the RA, or consider new evidence in reaching a decision.

The Administrative Law Judge, in acting on the employer's request for a *de novo* hearing, will schedule a hearing within five working days following receipt of the appeal file, and will render a decision within ten working days following the hearing. The Administrative Law Judge may affirm, reverse, or modify the RA's decision.

The DOL is represented in appeals solely by designated employees in the Office of the Solicitor of Labor. Regional Office and SESA staff are expected to be available to testify at these hearings if the need arises. Pending a decision by the Administrative Law Judge, all communications with the Office of the Administrative Law Judges, the employer, or the employer's representative, must be made through the Solicitor's Office.

D. Recruitment

The active recruitment of U.S. workers is an integral part of the labor certification process. This requires positive action on the part of the employer and coordination and cooperation throughout the Employment Service system. As the statute provides, labor certification may not be issued if "the Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply" upon being advised by the Secretary of a significant number of qualified U.S. workers. The law further states that this effort is in addition to the recruitment through "the interstate employment service system". In making a finding of U.S. worker availability, the RA must have accurate documentation from Employment Service offices and from the employer of the efforts put forth by the employer and the SESA and the recruitment results.

1. Definition of "U.S. Worker"

This term means any worker (non-H–2A) who is legally permitted to work in the United States in the job opportunity. This would include U.S. citizens and aliens who have temporary or permanent resident status or nonimmigrant aliens who have authorization for such employment. Examples of documents evidencing work authorization are set forth in the instructions to INS Form I–9, Employment Eligibility Verification. Special Agricultural Workers (SAW) will also be considered to be U.S. workers under the following conditions:

a. The worker has applied for adjustment of status, and received INS Form I–688A (Temporary Employment Authorization) granting temporary employment authorization and the authorized period has not expired (Note: Form I–688A is given an alien pending final determination on application for temporary resident status.);

b. A worker who has been granted temporary resident status and has been issued Form I–688, Temporary Resident Card, authorizing employment and travel abroad; in this case the alien has the right to reside in the United States and accept employment in the same manner as an alien lawfully admitted for permanent resident status; or

c. A worker whose status has been adjusted to permanent resident status and has been issued Form I–551, Alien Registration Receipt Card. An alien who has applied for legalization under 8 CFR Part 245a will be considered a U.S. worker under the same circumstances outlined for SAW workers. These are aliens who resided continuously and unlawfully in the United States since January 1, 1982, and who have applied for legalization.

2. Local Recruitment

The actual recruitment of local workers for the job opportunity may be the most important aspect of the recruitment process. The experience of the Employment Service system over the years has indicated that a good proportion of workers responding to employer job offers are from the community in the area of employment.

At the time an agricultural employer files an application for H–2A workers with the RA, a copy is also submitted to the appropriate Employment Service office. The local office uses the job offer part of the application to prepare a local order and begins the recruitment process for U.S. workers in the local area. An agricultural clearance order is not extended intrastate and interstate until the H–2A application and clearance order have been approved by the RA. Referral on the local order will continue until fifty percent of the contract period is completed.

Employers are required to identify on their H–2A applications the total number of workers the employer anticipates hiring in the agricultural labor or service activity during the covered period of employment. For example, the employer may normally use one hundred workers to pick apples, but expects to hire forty local workers, as it has done for a number of years, and, therefore, is seeking H–2A certification for sixty workers for whom housing which meets standards is being provided. In such situations, as housing is not required for local workers, the employer should be advised to file a local job order for the forty workers needed. The local order should offer the minimum wages, benefits, and working conditions in the employer's H–2A job offer, except for housing, transportation, and meals, and local workers referred and hired on this job order should not be counted by the SESA or the Regional Office as being "available" for certification determination purposes on the H–2A application and the clearance order that is processed in conjunction with it. This situation applies only when the local office can substantiate that a separate local job order is being used for recruiting *only* local workers for whom housing is not a condition of employment.

In the example given, when the local office has satisfied the employer's historical local labor needs by filling the local order for 40 workers with 40 local referrals and hires, then the local office would continue to refer local workers on the clearance order to supplement out-of-area referrals being made, and these local referrals would then be counted as "available" for certification determination purposes and reported as such to the Regional Office. When such situations do occur, the Regional Office and the SESA will have to work closely together in order to insure that referrals and "available U.S. workers" are accurately reported.

3. Notice of Required Recruitment

Upon review and determination that the H–2A application meets the requirements of the regulations at 20 CFR 655.101–655.103, the RA advises the employer that the application has been accepted. The notice also advises the employer and the State agency of the recruitment efforts for U.S. workers which must be made, taking into account the acceptability of the employer's positive recruitment plan submitted with the application and incorporating this, where possible, into the notice. This would include specific advertising in newspapers and/or radio, as well as placing the job order into intrastate and interstate clearance to potential supply States. This will be a signal to the local and State Employment Service that recruitment is to be expanded beyond the local geographic area.

The notice shall, when appropriate, also require the employer to perform positive recruitment efforts in specific areas of traditional or expected worker supply other than the area of intended employment. In determining the scope of positive recruitment, the RA will consider:

a. The normal recruitment practices of non-H–2A agricultural employers who employ similar workers and are of comparable or smaller size to the H–2A employer; and

b. Information received from State agencies or other sources that there are a significant number of qualified workers who would likely be available through a face to face interview.

4. Positive Recruitment by Employer (See also Chapter I, Section B, 2)

Positive recruitment is defined in the regulations as "the active participation of an employer or its authorized hiring agent in locating and interviewing applicants in other potential labor supply areas and in the area where the employer's establishment is located in an effort to fill specific job openings".

a. *Positive Recruitment Plan.* At the time of application, the employer must present a plan for conducting positive recruitment of U.S. workers including specific steps to be taken, such as contacting former employees or negotiating with specific farm labor contractors. This plan, which can be a series of brief statements, should address recruitment that will be in addition to the normal filing of a local job order and the extension of the agricultural clearance order through the interstate system. The employer may use Form ETA 750, Part A, Item 21, for this purpose. The employer should describe recruitment efforts for U.S. workers made prior to filing the application, although the RA is precluded from requiring such domestic worker recruitment prior to submittal of an application.

The employer should consider the recruitment efforts and locations which non-H–2A agricultural employers of comparable or smaller size have successfully utilized previously and either set forth a plan or agree to conduct recruitment in the same manner as that conducted by such non-H–2A employers.

The employer should also describe efforts to locate and utilize farm labor contractors when it is the prevailing practice of non-H–2A employers in the area of employment and for the occupation.

b. *Cooperation with the Employment Service.* The employer agrees to comply with the assurances set forth in the regulations at 20 CFR 655.103. One of these assurances is to cooperate with the Employment Service system in the active recruitment of U.S. workers by assisting the Employment Service in

preparing agricultural clearance orders and permitting the order to be cleared through the Employment Service system.

This will include advertising the job opportunity in newspapers and/or on radio. This may be required in a language other than English, if the RA believes it is appropriate. When positive recruitment is undertaken and the applicant holding office requests it, similar advertising shall be used in conjunction with such recruitment.

5. Recruitment after Certification (See also Chapter I, Section B, 1)

The employer's positive recruitment obligation continues until the H–2A workers certified have departed for the employer's place of work. In order to establish a cut off time for such active recruitment, the employer must notify the local office in writing of the exact date that the H–2A workers departed for employment. A copy of this communication should also be sent to the RA. The employer cannot be required to engage in positive recruitment efforts on or after the date of departure of H–2A workers for the place of work.

The referral of workers by the Employment Service does not end on the H–2A departure date mentioned above. The employer must keep an active order on file until fifty percent of the work period has been completed, except for "small" employers exempted by the regulations at 20 CFR 655.106(f). The ES system will continue to refer U.S. workers who apply as long as there is an active job order on file. However, active recruitment on the part of the SESA should cease when the employer advises that H–2A workers are enroute to the place of employment.

E. Certification Determinations

1. Definition—RA Role

The regulations define a "temporary alien agricultural certification determination" as the written determination of the RA to approve or deny a temporary alien agricultural certification application. The application is filed directly with the RA.

The RA has the authority to approve or deny, in whole or in part, and to accept for consideration, applications for temporary alien agricultural labor certification. The RA may delegate all or part of this authority to a designated Regional Office staff member. The Regional Certifying Officer would be one obvious designee.

Under the regulations, the RA or a designee usually makes certification determinations. The Director, U.S. Employment Service (or the Director's designee), may also make certification determinations when special circumstances warrant. What constitutes special circumstances will be decided by the Director as the need arises.

2. Denials

The determination to approve or deny certification must be made no later than twenty calendar days before the employer's stated date of need, unless other provisions of the regulations apply. Factors which would delay the issuance of a certification determination include the submittal of an untimely modified application resulting in a day-for-day postponement of the certification date.

If the certification is denied, the determination must be in writing and mailed to the employer by any means reasonably intended to assure next day delivery. A copy of the determination should also be mailed to the SESA.

The RA's denial notice must:

- State the reasons for denial, including citations to the relevant regulatory standards;
- Offer the applicant an opportunity to request an expedited administrative review or *de novo* hearing; and
- State that if the employer does not request an expedited administrative review or a hearing within seven calendar days, no further consideration of the employer's application will be made by any DOL official.

3. Bases for Denial in Whole or in Part

Certification requests may be denied in whole or in part. The RA must deny a temporary alien agricultural labor certification for the employment of H–2A workers in its entirety if sufficient U.S. workers are available to fill all of the employer's job opportunities. If U.S. workers are available to fill a portion of the employer's job opportunities, certification must be denied for that part of the request for which U.S. workers are available.

The regulations provide that no U.S. worker may be referred to an employer unless the worker has been made aware of the terms, conditions, and qualifications for the job, and has indicated that he/she meets the qualifications and is able, willing, and eligible (as defined in the regulations) to take the job. Local offices are encouraged to provide the worker with a copy of Form WH–455 (Information on Wage and Working Conditions), listing the material terms and conditions of the job offer, for this purpose. U.S. workers are not required to read the entire job order, or to have it read to them, to obtain the required pre-referral familiarity with the job offer. No signed statement by the referring ES official or the worker is necessary in order to comply with this requirement.

The RA may consider a U.S. worker likely to sign a work contract with an employer if the RA has information that the worker was referred to the employer and was told by the employer to report for the job opportunity. The RA should also consider as available not only those workers whom the employer has rejected for other than lawful, job-related reasons, but also those workers for whom the employer has provided no reason for rejection. The regulations, therefore, now codify the longstanding practice of DOL to deduct "outstanding" referrals from the employer's certification request.

In order for the RA to make the required determination of unavailability on certification day, the employer's recruitment report (which was required by the RA in the acceptance letter) should be received in the Regional Office no later than three calendar days prior to the scheduled certification date. The RA should advise the employer in the acceptance letter that the certification may be delayed if the report is not received in a timely manner. However, the RA may not deny the certification solely because the written report has not been submitted. If delays are encountered, the RA should contact the employer by telephone to secure the required information. If attempts to do this are unsuccessful, then the RA may delay the certification determination until the employer is contacted or the written report is received.

In addition, the local office should telephone the RA with its own recruitment report no later than three calendar days prior to the certification date. The felephone report should later be confirmed in writing. The local office should also telephone the RA on the date of certification if there has been any change in its earlier report. If no update is provided, the RA will assume the report is final, and will base a certification determination on the facts at hand.

The RA must also deny labor certification if the employer has not complied with the adverse effect criteria in the regulation at 20 CFR 655.102; if the employer has not complied with the workers' compensation requirements at 20 CFR 655.102(b)(2) and provided proof of such coverage; and if the employer has not complied with the positive recruitment requirements set forth by the RA.

The regulations specifically provide that the RA may not certify if an employer has substantially violated a material term or condition of an H–2A labor certification within the past two years. Such violation must initially be raised in the context of the regulations at 20 CFR 655.110, which grants certain appeal rights to the employer. Denial of labor certification on the basis of a substantial violation may not be invoked until the RA's determination has been finalized through the DOL appeal process.

4. Appeals

The administrative appeal provisions relating to a denial of labor certification are the same as those for unacceptable applications. In each case, the provisions in the regulations at 20 CFR 655.112 must be followed.

5. Certifications Granted

The RA's notification to an employer that a temporary labor certification for H–2A workers has been granted in whole or in part should consist of: a letter outlining the terms and conditions of the labor certification (see the Appendices for a sample transmittal letter); and a bill for granting the H–2A certification, in whole or in part, indicating that the fee is nonrefundable and containing instructions for payment within thirty calendar days.

RAs shall transmit certification determinations to the employer by means normally assuring next day delivery. Further, employers may arrange with Regional Office staff for other means of pick up or delivery. RAs should mail copies of the transmittal letter to the State and local offices.

6. Fees

The regulations require that employers will be billed for receiving an H–2A labor certification at the time the certification is granted. Employers will be charged a fee of $100 for each H–2A certification granted (in whole or in part), plus an additional $10 for each H–2A position certified by the RA, up to a maximum fee of $1,000 per certification.

Fees are not charged for redeterminations. If an employer chooses not to petition INS for visas for the total number of workers needed to fill the H–2A positions for which certification has been granted, such a decision does not relieve the employer of the obligation to pay the $10 fee for each job opportunity certified (up to $1,000 maximum).

Procedures for billing and processing payments for fees are contained in FM No. 73–87, July 23, 1987. (See also Appendix J.)

F. Post-Certification Activities

1. Determinations on Changes Requested After Certification

a. *Terms and Conditions.* The labor certification determination is a finding that the labor market has been sufficiently tested for determination of U.S. worker availability and that the adverse effect criteria have been met. Such determination is based upon the terms and conditions of the job offer and assurances. If an employer wishes to make any changes in the *level* of benefits, wages, and working conditions at any time during the work contract period, the employer must make written application to and obtain approval of the RA. The RA must carefully consider the following in making this determination:

- Is the level of benefits more advantageous to workers?
- If the benefits had been offered initially, what effect would there have been on U.S. worker availability? and
- Are the amendments merely technical or procedural?

Each request for change must be reviewed and approval considered on a case by case basis. Where the changes in the level of benefits are the result of DOL regulation changes (AEWRs, meal charges, etc.), the employer need not obtain approval of the RA.

b. *Extension of Time Period.* The temporary agricultural labor certification is for a specific period of time which coincides with the employer's job offer. If H–2A workers are needed beyond this period of time, the certification period may be extended under certain conditions and procedures. Before taking such action, the employer should carefully determine if the period of additional need is of a short term duration of two weeks or less or for a longer term of extension.

- *Short Term Extension.* If the period of extension is two weeks or less, the employer need only apply to the INS. If INS grants the extension, the certification period will be deemed to be that approved by INS. This will not require any action by DOL or the SESA in effecting such changes.

Exception: If the original duration of certification is for a very short period of time, such as one week, INS will not grant a two-week extension. INS's extensions will be limited to a period of time not to exceed the original certification period.

- *Long Term Extension.* If an extension is needed beyond the period which INS would grant on a short-term basis, an employer may apply to the RA for an extension of the certification period. The written request should be made after fifty percent of the work contract period has been completed. The written request should support the request for extension by explaining why the extension could not have been foreseen by the employer at the time of filing the application; and by describing what factors beyond the control of the employer made the extension necessary, such as weather, increased crop forecast, or unforeseen market conditions.

The RA shall not grant an extension if the employer has already been granted a short term extension by INS. Also, the RA shall not grant an extension, except under highly unusual and extraordinary circumstances, where the extension would bring the total certification period to twelve months or more. When such extraordinary circumstances arise the RA should confer with the National Office before making a determination.

Upon consideration of all the facts and information, the RA must grant or deny the certification extension request and notify the employer in writing of the decision. This decision is final agency action, and no further administrative review is permitted. If the extension request is denied, the employer may submit a new temporary alien agricultural labor certification application.

2. Flexibility for Associations in Utilizing Certified Workers

a. *Joint Employer Relationship.* If an association is already identified as a joint employer, the temporary agricultural labor certification granted shall be made jointly to the association and to its specified employer members. The workers may be transferred among employer members of the association under the following conditions:

- Work is limited to that permitted in the certification of the described job opportunity, and housing, which has met applicable standards, is available.
- The association controls the assignment of such workers and maintains a record of such assignments.
- Workers may not be transferred to any employer member who is ineligible to receive workers as a result of certification penalties imposed pursuant to the regulation at 20 CFR 655.110.

b. *Sole Employer Relationship.* The temporary alien agricultural labor certification is granted to the association only. The certified job opportunities, in this case, may be used by any of its members except an ineligible employer member described above.

c. *Association as an Agent.* For purposes of compliance with the fifty

percent rule only, an association acting as an agent for its employer members may be permitted to transfer workers among individual growers and will not be considered a joint employer with all the attendant responsibilities by doing so.

3. Redeterminations for Shortfall

After a certification determination has been made, an employer may request a new determination based on non-availability of able, willing, qualified, and eligible U.S. workers. This request may be made at any time after the official determination is rendered by the RA. The employer is not required to wait until the date of need to make an assertion of non-availability.

The regulations provide that a labor certification determination must be made no later than twenty days before the expected date of need, unless reduced by a day-for-day postponement for not timely submitting a corrected acceptable application. Because of this early certification determination, it may happen that workers initially found to be available will not report for work at the time and place needed. Further, the employer may assert that other workers may not be "eligible" in terms of being legally permitted to work in the U.S. or that specific U.S. workers are not able, willing and qualified for the job opportunity.

The employer may request a new determination in such cases. The request may be made by telephone to the RA but must be promptly (within 72 hours) confirmed by the employer in writing. The RA must make a new determination within seventy-two hours after a telephone or written request is received. *This is a statutory requirement.* The following procedures apply:

a. *Workers Not Able, Willing, Qualified, or Eligible.* When an employer asserts that any worker counted as available in the previous determination is not an "eligible" worker (legally entitled to work) or is not able, willing, or qualified to perform the job, the employer must provide a signed statement supporting this assertion within seventy-two hours after making a redetermination request. The employer must identify each worker and provide a specific lawful job-related reason for rejecting or terminating such a worker.

For redetermination requests related to workers alleged to be not able, willing, qualified, or eligible, the burden of proof for such assertions rests with the employer, as the statute provides. Without a written statement of facts from the employer, the RA may not approve a redetermination request of this nature. However, the RA must render a determination to disapprove the request within seventy-two hours of the initial request made by telephone.

b. *Workers Not Available.* If the employer requests a new determination solely on the basis of worker non-availability, the employer is required to submit a written confirmation within seventy-two hours. However, if the employer does not provide a written confirmation within seventy-two hours, the RA may make a new determination to approve the request based solely on the information provided by the employer by telephone, and any confirming information which may be provided by the local office. Again, the RA's redetermination must be made within seventy-two hours after receipt of the employer's request, as required by statute.

c. *Regional Office Review and Determination.* The RA shall review the request promptly and issue a determination within seventy-two hours as specified above. This process should include the following actions:

- The RA may request supporting information on U.S. worker non-availability or other relevant factors from the Job Service order holding office.
- Prior to making a determination, the RA will ascertain through reliable sources of information (SESAs or other) whether able, willing, and qualified replacement U.S. workers are available and can realistically be expected to report to the employer's establishment for work within the seventy-two hours from the date the employer's request was received.

If the RA cannot identify sufficient qualified U.S. workers who are likely to be available, the RA should grant the employer's new determination request in whole or in part. The notification must be in writing and sent by means usually ensuring next day delivery. The RA's determination in this instance shall be the final decision of the Secretary, and no further review will be made by any DOL official. The employer is not entitled to an expedited administrative review or *de novo* hearing before an administrative law judge on redetermination. Employers may submit countervailing evidence to INS in such instances. However, this does not preclude an employer from subsequently filing a new request for a new determination based on subsequent shortfalls of U.S. workers.

4. *Application of the Fifty Percent Rule* (See also Chapter I, Section B, 2)

The fifty percant rule relates to the first half of the total period of the work contract; during this time the employer must continue to provide employment to any qualified, eligible U.S. worker who may apply to the employer for employment. This continues even though labor certification has been granted to an employer, and H-2A workers are at the job site.

The ES system and the employer must actively recruit U.S. workers for the job opportunity until the date that H-2A workers depart for the employer's place of work. From the date of such departure, the order must remain open, and the employer must continue to accept and employ workers who apply for the job opportunity until fifty percent of the period of the work contract (under which the alien worker was hired) has elapsed. The ES System should not actively recruit U.S. workers after the H-2A workers have arrived, but must refer workers who apply to H-2A employers if there is no suitable alternative employment available or if the worker expresses a preference for an H-2A employer's opening.

In addition, the employer must offer to provide housing to any non-commuting worker. If the employer cannot provide employment and housing to both the U.S. worker and H-2A worker, the employer may have to make other arrangements for the H-2A worker. Neither DOL nor the State ageucy have any active role to play or responsibility in such situations, and should not advise the employer on an appropriate course of action, except on an informal basis. Employers should be advised to consult with INS when such circumstances occur.

There is an exception to the fifty percent rule. It does not apply to a small employer who did not use more than five hundred man days of agricultural labor (as defined by the FLSA) during any calendar quarter during the preceding calendar year and is not a member of an association which has applied for H-2A workers.

5. Application of the Three-Fourths Guarantee

The three-fourths guarantee of employment applies to the entire work contract period, including any extensions thereof. The purpose of such a guarantee is to ensure a certain level of sustained opportunity for employment and wages during the period of labor certification.

As part of the job offer, the employer "shall guarantee to offer the worker employment for at least three-fourths of the workdays of the total period during which the work contract and all extension thereof are in effect". Thus,

any additional wages which may be due as a result of the three-fourths guarantee can be computed only at the end of a season (or termination of the contract period).

The guarantee applies to all employees in the occupation on the job offer, both U.S. and H–2A workers. In applying this guarantee and determining any additional wages due, certain facts must be established.

a. *The Beginning Date and Ending Date of Employment.* The beginning date of the guarantee period is the first workday after arrival of the worker at the place of work. The ending date is the last date of expiration of the work contract and any extensions, or the termination date as established under the contract impossibility clause.

b. *The Number of Workdays between the Established Beginning and Ending Dates of the Guarantee Period.* The normal workdays are established in the job offer; e.g., five days, Monday through Friday; six days, Monday through Saturday; etc. The number of workdays in the established guarantee period are reduced by: (1) non-workdays established in the job offer; (2) worker's Sabbath, unless established as a non-workday; and (3) federal holidays.

c. *The Establishment of Hours of Worktime for the Guarantee Period.* The number of hours in the workday is established by the job offer. The total number of hours of worktime in the contract period is simply the product of workdays estabiiahed multiplied by specified hours.

d. The three-fourths guarantee of employment is established by computing 75% of the established total hours of worktime in the contract period.

Example 1: An agricultural employer requests workers during the period from July 1, 1987, through September 30, 1987. The job offer specifies eight hours of work for five days each week, Monday through Friday. The workers arrive on June 30, 1987. Therefore, the period of the work contract is for ninety-two calandar days. There are twenty-eight non-workdays during this period of sixty-four workdays: thirteen Saturdays, thirteen Sundays, and two federal holidays. This leaves sixty-four workdays during the contract period. Therefore, the three-fourths guarantee would total three hundred and eighty-four hours (75% of 8 hours/workday x 64 workdays).

The employer must maintain payroll records which show the number of hours offered each day and the number of hours actually worked each day. This daily record should also clearly account for the reason(s) a worker did not work the full number of hours offered.

In essence, the number of hours of available work per day is simply the sum of the number of hours actually worked plus any hours offered but not worked (up to the maximum number of daily work hours specified in the clearance order).

In meeting the three-fourths guarantee, the worker cannot be required to work for more than the number of hours specified for a day on the job offer. Also, the worker cannot be required to work on the worker's Sabbath or a federal holiday.

However, the worker may volunteer to work more than the specified hours for a day or to work on his/her Sabbath or to work on a federal holiday. In such cases, the hours actually worked may be counted toward meeting the three-fourths guarantee. However, the employer may not count any hours offered on such days in which the worker refused or failed to work. If, for example, a worker voluntarily worked four hours on a Sabbath when eight hours were offered by the employer, the employer may take credit only for four hours in meeting the three-fourths guarantee.

Example 2: Example 1 above reflects a three-fourths guarantee of three hundred and eighty-four hours during an employment period from July 1, 1987, through September 30, 1987. Now assume that an H–2A worker's daily record reflects the following data for this period: a total of three hundred and twenty hours actually worked *plus* a total of thirty-two hours which the worker refused within normal, specified workdays. All three hundred and fifty-two of these hours (320+32) may be credited towarda the three-fourth guarantee.

In this case the employer would still have to pay the worker thirty-two hours (384–352) of supplemental wages. If the worker is employed by the hour, the supplemental pay would be thirty-two hours times the hourly rate specified on the job offer. If the worker has been paid on a piece rate, or other incentive basis, the worker's average hourly piece rate earnings or the job offer hourly rate, whichever is higher, would be used to calculate the amount due under the guarantee.

Employment Service personnel and other appropriate staff should be familiar with the methodology in calculating the guaranteed wage, but the enforcement of the three-fourths guarantee is the responsibility of the Employment Standards Administration (ESA).

G. Monitoring, Enforcement, Complaints, and Penalties

1. Fraud and Willful Misrepresentation

a. *Referral for Investigation.* The RA must refer the following matters to the Immigration and Naturalization Service and DOL Office of the Inspector General:

- Any possible fraud or willful misrepresentation discovered by the RA prior to final labor certification determination; and
- Any discovery by the RA that the employer is the subject of a criminal indictment or information filed in a court, with respect to the employer's application.

b. *Continued Processing.* Until (and unless) a court or the Immigration and Naturalization Service determines that there was fraud or willful misrepresentation, the RA must continue processing the application of an employer referred for investigation and may eventually grant certification.

c. *Terminated Processing.* Any H–2A application determined by a court or the Immigration and Naturalization Service to involve fraud or willful misrepresentation thereby becomes invalid, and the RA must:

- Terminate consideration of the application; and
- Return the application to the employer, with reasons stated in writing.

2. Employment Service Complaint System (20 CFR Part 658, Subpart E)

If workers hired under the specific conditions of an H–2A job order, or other workers in corresponding employment employed by an H–2A employer, file complaints with the local office under the Employment Service Complaint System regarding alleged noncompliance by employers of H–2A workers, such complaints will be referred promptly by the local office to the appropriate office of the Employment Standards Administration (ESA), Wage and Hour Division, for action and resolution. In referring such complaints, the local office should follow the procedures set forth in the complaint system regulations at 20 CFR Part 658, Subpart E.

The ESA Wage and Hour Division office may report the results of its investigation to the appropriate RA for consideration of employer sanctions under the regulation at 20 CFR 655.110 or for such other action as may be appropriate.

3. Noncompliance with Terms and Conditions of Temporary Alien Agricultural Labor Certifications

a. *Employment and Training Administration (ETA) Investigation of Violations.* Certain investigative functions deemed necessary to carry out provisions of law and regulations have

been delegated by the Secretary of Labor to the RA.

In general, matters concerning the obligations of an employer related to the labor certification process are administered and enforced by the ETA, primarily by the appropriate RA in the region of intended employment.

If the RA has reason to believe that an employer has violated a material term or condition of certification, then the RA must either investigate the matter himself/herself, or refer to information and recommendations from an ESA investigation of the matter, to determine one of the following:

- A substantial violation has occurred;
- A less than substantial violation has occurred; or
- No violation has occurred.

By statute, the Secretary of Labor is required to deny an H–2A certification if the employer has committed a substantial violation of a material term or condition of an H–2A certification during the past two years.

The H–2A regulations define a substantial violation, first, as one or more acts of commission or omission by an employer, with respect to which the RA determines:

- That the act(s) is/are significantly injurious to the wages, benefits, or working conditions of 10% or more of the employer's workforce; *and*
- The employer either has failed to comply with penalties or orders imposed pursuant to ESA regulations for such acts; *or* the employer has engaged in a pattern or practice of such acts.

Other acts which are deemed substantial violations include:

- Impeding an ETA or ESA investigation of the employer instituted pursuant to ETA's or ESA's H–2A regulations;
- Not paying required fee(s) in a timely manner;
- Having been found to be currently ineligible to apply for certification due to failure to comply with terms of H–2 certification granted before June 1, 1987; and
- Fraud and/or willful misrepresentation by the employer during the process of applying for labor certification.

If, in the RA's judgment, there were extenuating circumstances involved with any of these actions, the RA should weigh the influence of such circumstances on the situation at issue. The RA may then decide that they were sufficiently ameliorating to preclude a finding that a substantial violation was involved.

Likewise, a less than substantial violation is an act of commission or omission which the RA determines violates the H–2A regulations, but which is not a substantial violation as defined above.

b. *ESA Investigation* (See also 29 CFR Part 501). Certain investigative functions deemed necessary to carry out the provisions of law and regulations have been delegated by the Secretary of Labor to the ESA.

In general, matters concerning the obligations on the work contract between an employer of H–2A workers and the U.S. and H–2A workers are enforced by the ESA, Wage and Hour Division. The ESA, Wage and Hour Division, has the authority and responsibility to conduct investigations and inspections regarding such matters as the payment of required wages, transportation, meals, and housing provided during the period of employment.

The areas where ESA has such jurisdiction are generally limited to actual events that transpire when there is an employer-employee relationship, and an employee's complaint must be limited to events that occur as a result of that relationship in order for ESA to assume responsibility for enforcement.

The RA may use an appropriate ESA investigative report or finding as the basis for determining whether an employer has violated a term or condition of certification.

Regional Offices should provide copies of approved H–2A applications, acceptable amendments to job orders, notices of certification determinations, and any other documentation deemed relevant for enforcement purposes to their Regional ESA counterparts. More specific procedures for the ETA/ESA interface on matters related to H–2A investigations, such as coordination of field work, are being developed and will be provided to Regional Offices (ETA and ESA) at a later date.

4. Penalties

a. *ESA Penalties.* If it is determined that H–2A work contract provisions have been violated, then the ESA, Wage and Hour Division, may take any of the following actions:

- Institute appropriate administrative proceedings, including the enforcement of any contractual obligation, the recovery of unpaid wages, and the assessment of a civil money penalty;
- Petition an appropriate U.S. District Court for injunctive relief, including the withholding of unpaid wages, against any violating employer; and
- Petition an appropriate U.S. District Court for specific performance of contractual obligations.

In addition, the ESA, Wage and Hour Division, must report any violation found to the appropriate RA for ETA in the region where the violation occurred and must forward appropriate investigative information to the RA for consideration. The ESA, Wage and Hour Division, may also recommend to the RA the denial of future labor certification.

All penalties invoked by the ESA, Wage and Hour Division, are treated separately from sanctions available to the RA for ETA. An employer's obligations to comply with ESA penalties does not absolve an employer from potential ETA sanctions.

b. *ETA Sanctions for Substantial Violations.* If the RA determines that a substantial violation has occurred, then the RA must notify the employer that certification will not be granted for the next period of time during a calendar year in which the employer would be expected to request certification.

If the RA determines that two substantial violations have occurred, or the same violation has been repeated, then the RA may notify the employer that certification will not be granted for any period within the next two calendar years.

Likewise, if the RA determines that three or more substantial violations, or repetitions thereof, have occurred, then the RA may notify the employer that certification will not be granted for any period within the next three calendar years.

The RA's notice must be in writing, state the reason(s) for the sanction(s), and offer the employer an opportunity for an administrative review or *de novo* hearing on the sanction(s) within seven calendar days as prescribed in 20 CFR 655.112.

c. *Requirement of Special Procedures for Less Than Substantial Violations.* If the RA determines that a less than substantial violation has occurred, then the RA may require, as a condition for certification, the employer to comply with special procedures designed to enhance the recruitment and retention of U.S. workers in the next year.

Any special procedures required by the RA must be reasonable and no more than deemed necessary to assure employer compliance with criteria for availability of and adverse effect on U.S. workers. These cannot include any requirement that the employer offer better wages, benefits, and working conditions than those specified in the regulations at 20 CFR 655.102.

The following are illustrative of the special procedures which could be imposed, as appropriate:

• Prohibiting the employer from administering any pre-hiring test of agility or other physical skill;

• Requiring the employer to install extra phone lines and provide extra staff assistance to interview by telephone workers being referred from out of the area;

• Requiring the employer to be available seven days a week, from 8:00 a.m. to 9:00 p.m., to interview applicants during the recruitment period;

• Prohibiting the employer from requiring applicants to provide references as a condition of applying for the job;

• Requiring the employer to extend the minimum training/breaking-in period on the job, if one is normally required;

• Requiring the employer to delegate the authority to make a hiring commitment to an Employment Service representative;

• Requiring the employer to restructure certain job components (such as the substitution of lighter weight ladders for heavier ones); and

• Prohibiting the employer from requiring experience in the occupation when such a requirement is not unequivocally supportable by the DOT.

The RA must notify the employer in writing of any required special procedures. The notice must also state the reason(s) for requiring special procedures, that the special procedures become part of the terms of certification, and that the employer has an opportunity to appeal the requirement of special procedures within seven calendar days.

Failure to comply with the special procedures imposed under appropriate circumstances will result in an employer's otherwise approved labor certification being reduced by twenty-five percent of the job opportunities otherwise approvable.

5. Applicability of Penalties to Associations

a. *Penalties Involving Members of Joint Employer Associations.* If, after appropriate investigation, the RA determines that an individual producer member of a joint employer association has committed a substantial violation, the denial of certification penalty shall apply only to that member of the association unless the RA determines that the association or other association member participated in, had knowledge of, or had reason to know of the violation. In such a case the penalty shall be invoked against the association or other association member as well.

b. *Penalties Involving Associations Acting as Joint Employers.* If the RA determines that an association acting as a joint employer with its members has committed a substantial violation, then the RA's sanction denying certification applies only to the association, unless a member of the association is determined by the RA to have participated in, had knowledge of, or reason to know of the violation.

c. *Penalties Involving Associations Acting as Sole Employers.* If the RA determines that an association acting as a sole employer has committed a substantial violation, then the RA's sanction denying certification to the association means that no individual producer member shall be permitted to employ certified H–2A workers in the crop and occupation for which the H–2A workers had been previously certified. However, any individual producer member of the association may apply for certification in either the capacity of an individual employer or as a member of a joint employer association.

6. Appeals of Penalties

Any administrative penalty assessed by the ESA, Wage and Hour Division, or any sanctions or special requirements imposed by the RA may be appealed by the employer. The manner and time frame for such appeals must be stated in the written notification to the employer and are set forth at 20 CFR 655.112 (for ETA) and at 29 CFR Part 501, Subpart C (for ESA).

7. *Abuses Under Fifty Percent Rule* (See also Chapter I, Section F, 4). The regulations at 20 CFR 655.106(g) implement the provisions of the H–2A program which prohibit persons from withholding U.S. workers under certain circumstances. Any person who has reason to believe that a person or entity has willfully and knowingly withheld U.S. workers prior to the arrival at the job site of H–2A workers in order to force the hiring of U.S. workers may submit a written complaint to the local office. The complaint shall clearly identify the person or entity whom the employer believes has withheld the U.S. workers, and shall specify sufficient facts to support the allegation (i.e., dates, places, numbers, and names of U.S. workers) which will permit an investigation to be conducted by the local office.

Upon receipt of a written complaint, the local office will take the steps listed below.

• Review the complaint to make sure all necessary information has been furnished. If information is missing, the employer should be contacted by phone and requested to supply it.

• Telephone the Regional Office and advise that the local office has received the complaint, and provide relevant information requested by the Regional Office.

• Immediately investigate the complaint, including the conduct of the interviews specified in the regulations. If the local office is unable to conduct some or any of the interviews, the Regional Office should be notified immediately by telephone so the Regional Office can conduct any interviews that the local office cannot conduct.

• Within five (5) working days after receipt of the complaint, prepare and submit directly to the Regional Office (with a copy to the State office) a report of findings, including recommendations, as well as the original of the employer's complaint.

Upon receipt of the original complaint and the report of findings from the local office, the Regional Office will take the following steps:

• Immediately review both and conduct any additional investigation deemed appropriate, including any interviews still needed.

• No later than thirty-six working hours after receipt of the complaint and report of findings, issue written findings to the local office and the employer, with a copy to the State office.

Where the RA determines that the employer's complaint is valid and justified, the RA shall immediately suspend the application of the fifty percent requirement specified in the regulations at 20 CFR 655.103(e), provided that no such suspension shall take place until the interviews required by the regulations at 20 CFR 655.106(g) have been conducted.

Where the RA determines that the employer's complaint is not valid and justified, the RA will notify the employer, the local office, and the State office of the determination in writing.

The RA's determination shall be the final decision of the Secretary of Labor, and no further review by any DOL official shall be given to it.

Chapter II—Special Items

A. Adverse Effect Wage Rates (AEWRs)

This is the hourly wage rate which normally must be offered and paid, as a minimum, to every worker (domestic and alien) for work performed in conjunction with an H–2A application and certification. It is designed to prevent the presence of aliens from adversely affecting the wages of U.S. workers similarly employed.

AEWRs are established for every State, except Alaska, and are published annually in the **Federal Register** in the

form of a notice signed by the Director, U.S. Employment Service (USES). The AEWRs correspond to survey findings made by the U.S. Department of Agriculture (USDA), which each year publishes an annual weighted average hourly wage rate for field and livestock workers (combined) for the nineteen USDA regions in which quarterly wage surveys are conducted. The AEWRs are usually published in March or April, and become effective immediately upon publication.

Certified H–2A employers must agree, as a condition for receiving certification, to pay a higher AEWR than the one in effect at the time an application is submitted in the event publication of the annual AEWR coincides with the period of employment covered by an H–2A certification; i.e., where, during the season, the AEWR increases, work performed on or after the date of increase must be compensated at the new AEWR.

There are two current, practical situations where an AEWR would not be the hourly minimum guarantee which is required:

- When a State agency conducts a prevailing wage survey and the results of the survey show a higher prevailing hourly wage rate in the area and the occupation, and the finding is verified in writing by the National Office, the higher prevailing hourly wage is required; and
- Sheepherder and custom combine crew occupations (which involve payment on a monthly basis) are governed by prevailing wage surveys conducted by State agencies which are verified annually by the National Office and transmitted to the Regional Offices.

The H–2A regulations also permit the Director, USES, to establish special AEWRs for other types of occupations under the "special circumstances" provisions of 20 CFR 655.93(b). SESA's and Regional Offices will be informed when any special AEWRs are established.

At present, no computed AEWRs are below the legal FLSA minimum wage. In the event the Federal minimum wage rate should be raised to a level above that of any AEWR, the higher FLSA minimum will be required by the provisions at 20 CFR 655.107(c).

When workers are paid on a piece rate basis, the worker's average hourly price rate earnings for each pay period must equal or exceed the AEWR (or prevailing hourly rate as determined by a SESA survey and verified by the National Office, if applicable). If the earnings for piece rate hours worked fall below this level, the worker's pay must be supplemented to raise the earnings to the AEWR level. If, over a normal pay period, workers perform a combination of tasks which involve payment on both an hourly and piece rate basis, workers must be paid at least the AEWR for *every* hour worked on an hourly pay basis, and the "averaging" principle does not apply to those hours worked.

B. Prevailing Wage Surveys

SESAs should conduct prevailing wage surveys in accordance with the procedures presented in ET Handbook No. 385, P.I–111 through 143. These surveys are needed in order to comply with the regulations governing agricultural clearance orders at 20 CFR Part 653, Subpart F. Generally, surveys should be made once per season in a crop activity where:

- One hundred or more workers were employed during the previous season and may be expected to be employed in the future;
- Temporary alien workers were employed or requested in the previous season, and there is reason to believe H–2A certification will be sought for the coming season; or
- The crop activity has an unusually complex wage structure or there are other factors which argue for the collection of empirical data in order to arrive at an objective determination on acceptable wages.

Because of IRCA and the potential for an influx of "new" employers seeking H–2A workers, SESAs may be faced with the task of having to provide Regional Offices with advice on the acceptability of other than hourly wage rates without the time and opportunity to conduct surveys according to ET Handbook No. 385 procedures. In such cases, Regional Offices and SESAs will have to base their determinations on the best information available which can be gathered during the time available.

Normally, the best sources for information to use in arriving at a decision are open and closed local job orders involving the same or similar occupation, activity, and crop. Telephone requests for information from employers who do not use the Employment Service also are recommended, as are consultations with Cooperative Extension Service staff, colleges and universities with staff conversant in the agricultural sciences, farmworker organizations (including JTPA 404 grantees) and agricultural employer organizations, such as the Farm Bureau. SESAs must also consider whatever documentation the H–2A employer has to submit.

C. Prevailing Practice and Related Determinations

In determining the acceptability of wages, benefits, and working conditions on an employer's H–2A application, the following three basic standards apply:

- The level of benefits being offered to U.S. workers must be no less than the same benefits the employer is offering, intends to offer, or will provide H–2A workers (and *vice versa*). Also, no offer may impose on U.S. workers any restrictions or obligations not imposed on H–2A workers;
- The minimum benefits, wages, and working conditions must be no less than those required by the regulations at 20 CFR 655.102–103 and 20 CFR Part 653, Subpart F; and
- For certain job elements, the employer must offer or must conform the job offer to conditions and standards which are "prevailing", "normal", or "common" practices or standards of other employers who hire U.S. workers in the same area and in the same occupation.

In order to arrive at determinations as to whether certain factors are "prevailing", SESAs are encouraged to conduct formal surveys of employers, as time and resources permit, utilizing the sample size and data collection/analysis principles required for prevailing wage surveys in ET Handbook No. 385, with survey findings and determinations verified by the Regional Office. If a formal survey is not possible in view of time or budgetary constraints, SESAs must, to the extent that they are available: (1) Utilize expert staff knowledge and experience available in the State agency; (2) informally survey local employers; (3) contact organizations such as the Cooperative Extension Service and the Farm Bureau; and (4) consult with farmworker advocates and other informed sources in order to arrive at a reasonable determination of prevailing, common or normal practice. The criteria that must be followed in determining that a practice (or other program component) is, in fact, *prevailing*, is as follows:

- A majority of employers of U.S. workers in an area (and for an occupation) engage in the practice (or offer the benefit); *and*
- This majority of employers (including both criteria and non-criteria employers for family housing and frequency of payment determinations, but non-criteria employers *only* for advance transportation and crewleader utilization determinations) also employs

a majority of U.S. workers in the occupation in the area.

SESAs must submit their findings in writing to the Regional Office in accordance with timetables established by the RA for this purpose.

If a SESA fails to arrive at a prevailing practice determination on a timely basis, or the Regional Office has reason to question the validity of the SESA's finding, the Regional Office is responsible for arriving at a threshold determination or revising the SESA determination. In so doing, the Regional Office should informally survey other informed sources in the same manner noted above for SESA informal surveys, except that the Regional Office is precluded from conducting surveys of 10 or more non-Federal sources because of Federal data collection and reporting constraints.

This "prevailing" standard and measurement must be used for determinations concerning family housing, transportation advances, frequency of payment, and utilization of farm labor contractors.

For some job components a standard somewhat less than the "prevailing practice" standard applies. Certain requirements are measured by the degree to which they are "normal" or "common", rather than "prevailing". The terms "normal" and "common", although difficult to quantify, for H–2A certification purposes mean situations which may be less than prevailing, but which clearly are not unusual or rare. The degree to which a practice is engaged in (or a benefit is provided) should be determined to be close to what is viewed (and measured) as "prevailing" but the degree by which the practice or benefit is measured and degree of proof needed to establish its acceptability for H–2A purposes is not as formal or stringent as "prevailing" calls for.

The specific requirements for "prevailing" determinations, i.e., a majority of employers who also employ a majority of U.S. workers, do not apply to determinations concerning provision of tools, productivity standards, positive recruitment practices, crewleader override, and occupational qualifications. Although formal SESA surveys are desirable in order to determine the extent of normal or common practice related to these factors, the fact that the standard of measurement is less than the "prevailing" standard means that the Regional Office will be required to exercise its discretion to a greater degree in applying and evaluating these factors on a reasonable basis.

The following discusses job elements where the "prevailing", "normal", or "common" practice principles must be applied and where the Regional Office must make a threshold determination on each element before an employer's application can be accepted:

1. Family Housing

When it is the prevailing practice of employers of U.S. workers in the area of employment and occupation to provide family housing, H–2A employers must provide family housing to workers with families who request that such housing be provided. In arriving at a determination as to whether the provision of family housing is a prevailing practice, RAs and SESAs must look beyond the threshold question on the basic availability of housing which is suitable for families. They must also determine whether it is the active practice of employers to offer this housing as a benefit to migrant workers who need and request it.

If the RA determines:

- That a majority of employers of U.S. workers (including both criteria and non-criteria employers) in an area do offer some family housing; and
- That this majority of employers also employs a majority of the U.S. workers in the occupation in the area;

then H–2A employers who provide housing for singles must also provide some family housing as a benefit in their job offers as being available for workers with families who request it.

In such cases RAs should require that each H–2A employer provide some family housing, but should be reasonable in prescribing the number of such units and time frames for the provision of the housing, taking into account the availability of family housing with other employers in the area and the likelihood of U.S. workers with families being available for the jobs. For example, it would be reasonable to require employers who have housing suitable for families which is readily convertible at minimal expense to do so in fairly speedy fashion, but it would not be reasonable to expect employers to erect or purchase new housing unless there was sufficient lead time involved.

2. Provision of Tools, Supplies, and Equipment

Normally, employers must provide, without charge, all tools, supplies, and equipment to the workers, if they are required to perform the tasks described in the job offer. However, if employers can demonstrate to the RA's satisfaction that it is the common practice in a particular area, crop activity, and occupation for workers to provide their own tools, supplies, and equipment, such an arrangement is permissible, if approved in advance by the RA. The employer must request the RA's approval for such an arrangement, and the burden of proof for convincing the RA that such a practice is, in fact, common is on the employer. Absent a specific, justifiable, approved request from an employer, the RA must require that employers provide necessary tools, supplies and equipment without charge to the worker.

3. Transportation Advances

H–2A employers must offer to advance transportation and subsistence costs (or otherwise provide them) to U.S. workers when it is the prevailing practice of non-H–2A employers in the area and occupation to do so (or when transportation is advanced for H–2A workers).

In order to determine whether such a requirement should be placed on H–2A employers, the RA must make a prevailing practice determination utilizing the techniques and principles discussed at the beginning of the section. In order for the RA to require advance transportation, the RA must find that a majority of the non-H–2A employers in the area and occupation engage in this practice, *and* this majority also employ a majority of the domestic workers in an area and occupation.

4. Productivity Standards

When employers pay by piece rate, they commonly establish minimum productivity standards; e.g., certain minimum levels of production which a worker must achieve in order to retain employment. For employers who have utilized the H–2 program in the past, such standards cannot be more than those which were in place in 1977 (or first year thereafter in which the employer entered the H–2 program), unless the Regional Office subsequently approved a higher minimum. For "new" H–2A employers, such standards cannot be more than those normally required in the activity (such as apple picking) in the area of intended employment.

"New" H–2A employers who specify minimum productivity requirements in their job orders must be able to demonstrate to the RA's satisfaction that these requirements are no more than those normally required by other employers of U.S. workers in the area.

In determining the acceptability of minimum productivity requirements, Regional Offices may ask the employer for the names of other employers who can verify the adequacy of the

employer's requirement. Regional Office staff may also wish to consult with Cooperative Extension Service or college or university personnel with expertise in agricultural sciences for advice and assistance in arriving at a determination.

If time and resources permit, it is recommended that SESA prevailing wage surveys be minimally modified to include information on productivity requirements in order to assist the Regional Office in making a threshold determination for new H–2A employers.

5. Frequency of Payment

Employers are required to pay their workers at least twice monthly, or more frequently if it is the prevailing practice of other employers (both criteria and non-criteria) of U.S. workers in the area of intended employment to do so. A prevailing practice determination on this job element must be made in the manner discussed at the beginning of this section.

6. Employer Positive Recruitment of U.S. Workers (Including Use of Crewleaders and Crewleader Overrides)

The degree to which an H–2A employer is required to engage in independent, positive recruitment is partly measured by the extent to which non-H–2A agricultural employers of comparable or smaller size in the area engage in U.S. worker recruitment, with respect to both effort and location.

For example, if it is normal for employers of U.S. workers in the area to contract with an agent in a distant labor supply State to have the agent visit locations of migrant workers and aggressively recruit them, the H–2A employer would be required to do the same, provided that the non-H–2A employers are not "larger" than the H–2A employer in terms of acreage, crop production, or number of workers normally employed.

Conversely, if similarly sized non-H–2A employers simply rely on "word-of-mouth" advertising or a "HELP WANTED" sign on the gate, the H–2A employer would not be expected to do any more (unless specifically required to by the RA based on the RA finding of U.S. worker availability).

Another factor which has to be considered in determining positive recruitment requirements is the extent to which non-H–2A employers utilize farm labor contractors (crewleaders) to secure U.S. workers. If a majority of non-H–2A employers in an area (who employ a majority of the U.S. workers in the area) use crewleaders, and provide an override (payment usually based on a per worker or per unit of production basis) for the crewleader's services, H–2A employers must be willing to do the same and must provide an override which is no less than that provided by other employers (except that meals and housing may be excluded from override considerations).

In determining the normal recruitment practices of non-H–2A employers, SESAs are required to conduct surveys of employers, as time and resources permit. In the event this cannot be accomplished by the SESA on a timely basis, the Regional Office must make the determination based on its own assessment.

The prevailing practice principle applies to the examination of crewleader utilization (but not override), and the RA's determination must be based on the measurement standard discussed above.

7. Appropriateness of Required Occupational Qualifications

Employers may require potential workers to possess certain qualifications deemed necessary to successfully perform the job duties specified in the job order for which H–2A certification is being sought. Regional Offices should review job offers where such qualifications are required on a case-by-case basis, and relate them to the actual work situation involved.

The statute and the regulations require that such qualifications be consistent with those normally found to be necessary by non-H–2A employers in the same or comparable occupations and crops. Most occupations for which H–2A certification is sought are low skilled in nature, and normally would not require much, if anything, in the way of special skills, training, or experience on the part of the workers. Where special skills, training, or experience are identified as requirements in a job order, the Regional Office must review them for their appropriateness.

In determining the appropriateness of occupational qualifications, the Regional Office should consider normal, accepted practice of non-H–2A employers in the same or comparable occupations and crops as a first step. Reviews of open and closed job orders in local offices and consultations with other employers are recommended for this purpose. Reference to available sources of occupational information, such as the *Dictionary of Occupational Titles* and its supplements, also are recommended, as are consultations with representatives of the Cooperative Extension Service, educators with agricultural expertise, and farmworker advocates and other informed sources.

In the event the non-acceptance of an employer's required occupational qualification is contested by an employer on an informal basis before an H–2A application is officially rejected by a Regional Office, the employer should be advised to submit documentation sufficient to support a finding that the requirement is appropriate because it is consistent with normal and accepted qualifications required by non-H–2A employers in the same or comparable occupations and crops.

The non-acceptability of a required occupational qualification on a job order is sufficient justification for refusing to accept an employer's H–2A application, and the burden of proof for justifying the acceptability of an occupational qualification which is questioned by the Regional Office rests with the employer.

D. Housing Inspections and Requirements

1. Requirements

Employers seeking H–2A certification must have free housing for non-local workers. The housing must meet the OSHA standards specified in the regulations at 29 CFR 1910.142 or, under certain conditions, the ETA standards at 20 CFR 654, unless the employer is providing rental or public accommodation type housing. In this case, local or State standards will apply. Absent local or State standards, the OSHA standards are applicable, and pre-occupancy housing inspections must be conducted. If DOL standards are not applicable, no pre-occupancy inspections need be conducted, and the employer need only document to the RA's satisfaction that the housing complies with the local or State standards which apply to the situation. (Employers also may be subject to additional housing requirements under MSPA.)

Mobile range housing for sheepherders is governed by the special procedures in FM #108–82, and mobile housing provided by Canadian custom combine owners is handled differently.

The SESA is responsible for assuring, through a pre-occupancy inspection, that housing which is governed by OSHA or ETA standards is inspected prior to occupancy, and that the housing meets DOL standards for safety and adequacy. In States where either local or State standards for housing of agricultural workers equal or exceed those at 20 CFR 654 or 29 CFR 1910.142 and are strictly enforced, a formal written cooperative agreement may be secured with another

governmental agency to do the necessary housing inspections.

Although the SESA may not do the actual inspections, the SESA must make the determination required by the regulations at 20 CFR 653.501(d)(2)(xv) before extending agricultural orders into clearance (except under conditional access situations). It is recommended that SESAs complete and attach optional Form ETA 338 to clearance orders to clearly show that the housing has been inspected and meets standards.

2. Conditional Access

The pre-clearance inspection may be delayed if the employer requests conditional access to the clearance system because the housing is not in compliance when the employer files the H–2A application package. The regulations require that this conditional access request contain an assurance that the housing will be available for inspection and will meet DOL requirements at least thirty days before the date of need. RAs should normally grant *pro forma* approval to such requests so the clearance process will not be delayed, and should only question them when there is available evidence that substantial problems exist which indicate strongly that the housing will not be approvable within the time frames noted.

The local office serving the area of an employer granted conditional access shall assure that the housing is inspected no later than thirty calendar days before the employer's stated date of need. If the housing fails to pass inspection, the employer shall be given an additional five calendar days to correct deficiencies noted by SESA staff. If the housing does not meet applicable standards upon reinspection no more than five days later, the local office must immediately notify the RA by telephone. After SESA consultation with the RA, the employer's job order shall be immediately removed from clearance, and, if workers were recruited against the order, the local office shall cooperate with SESAs in other States to locate and notify appropriate workers or crewleaders and to attempt to find alternative comparable employment for them. The RA may not grant a certification to an employer whose housing has not passed inspection.

3. OSHA and ETA Standards

With the exception of rental, public accommodation, mobile combine crew, or sheepherder housing, H–2A employer housing would be expected to comply with OSHA standards set forth at 29 CFR 1910.142, except that ETA standards at 20 CFR 654 apply to:

- Housing built before April 3, 1980, relying upon ETA standards; or
- Housing being constructed before April 3, 1980, relying upon ETA standards; or
- Housing for which a contract for construction was signed before March 4, 1980, relying upon ETA standards.

Employers with more than one housing site may have their housing inspected with either the full set of standards at 20 CFR 654 or 29 CFR 1910.142, whichever applies to each clearly identifiable separate housing site.

4. Variances and De Minimus Notices

The ETA and OSHA standards provide for deviations from particular requirements where there is no direct or immediate threat to occupants' safety or health. Under ETA standards, such deviations are authorized only if the employer applied on or before June 2, 1980, for a permanent structural variance and received written authorization from the RA for ETA to vary from specified ETA standards. Under the OSHA standards, such deviations are noted by field inspectors as *de minimus* violations under section 9(a) of the Occupational Safety and Health Act.

a. *ETA Variances (20 CFR 654.402).* All housing inspected under the regulations at 20 CFR Part 654 must literally meet the full set of ETA standards except when the RA for ETA, consulting with the RA for OSHA, granted a permanent structural variance from a specified standard; under that condition, the housing must meet the terms of the variance. The deadline for permanent variance applications was June 2, 1980.

b. *OSHA De Minimus Notices (29 CFR 1910.142).* OSHA regards ETA variances granted under 20 CFR 654.402 as meeting the *de minimus* provisions of section 9(a) of the Occupational Safety and Health Act.

Minor variations from specific dimensions or ratios of the OSHA standard which, in the judgment of the inspector, will not have a direct or immediate relationship to safety or health of the occupants will be considered *de minimus* according to section 9(a) of the Occupational Safety and Health Act.

If the inspector believes that variations from specific dimensions or ratios may have a direct effect on safety and health, the inspector may consult with OSHA to determine if the variation is considered *de minimus* under section 9(a) of the Occupational Safety and Health Act. The inspector must send a written request to the OSHA Area Director clearly specifying the standard involved, the extent of the variation, and any alternate measures which the employer took to protect the health and safety of workers.

One copy each of the request to the Area Director must be sent immediately to the RAs for ETA and OSHA. The OSHA Area Director will review the request to determine if the variation is considered *de minimus* under section 9(a) of the Occupational Safety and Health Act.

The Area Director, after reviewing the request, will advise the local ES office in writing whether or not the variation is considered *de minimus* according to section 9(a) of the Occupational Safety and Health Act. One copy each of the Area Director's response must be sent immediately to the RAs for ETA and OSHA.

Only when housing varies so substantially from an OSHA standard that it cannot be considered a *de minimus* violation would an employer seek a formal OSHA variance under the elaborate procedures of section 6 of the Occupational Safety and Health Act. According to OSHA variance procedures, affected employees must be given notice and opportunity for a hearing before issuing a variance from OSHA standards.

Should the employer elect to seek a variance under Section 6 (d) it is important to note that it will be necessary that the alternative method, system, or procedure be as safe and healthful as the requirements of the standard from which a variance is sought.

ETA and SESA staff should refer employers to the OSHA Area Director for information and assistance in filing a formal request for variance under section 6 of the Occupational Safety and Health Act if employers inquire about such matters.

E. Determining Labor Disputes

When filing an H–2A application, the employer must assure that the specific job opportunity for which certification is being requested is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute. Further, when the RA makes a certification determination, the RA must subtract from any otherwise approvable request the specific verified number of job opportunities involved which are vacant because of a strike or other labor dispute involving a work stoppage or a lockout in the specific occupation at the place of employment when H–2A

workers have been requested for those job opportunities.

Before taking such an action, the RA must verify the existence of a strike, labor dispute, or lockout, and the actual number of vacancies directly attributable thereto through the means of a SESA onsite investigation of the situation and a written report of the findings of that investigation.

The regulations provide that the RA must initiate an investigation upon the receipt of labor dispute information from any source. When such information is received in the Regional Office, the Regional Office should promptly inform the SESA that an onsite review and assessment of the situation should be conducted within five working days. The RA should consult with the SESA to develop mutually agreed upon steps to be taken in conducting the investigation.

Such procedures should require SESA staff to:

- Visit the employer's worksite;
- Interview the employer or the employer's designated representative(s);
- Interview the workers who have allegedly vacated the positions involved; and
- Interview the workers' designated representative(s) or union official(s) involved, if any.

These interviews should be designed to elicit the following information items (at a minimum), as well as any other information deemed appropriate by the Regional Office and the SESA:

- Name, address, phone number, and Social Security number of complaining employee;
- Length of time complaining employee has spent on the job which is the subject of the dispute;
- Use made of employer's grievance procedure, if any;
- Factual determination of whether a position which has been occupied is now vacant for reasons related to the dispute, and the number of such positions; and
- Specific conditions complained about with any evidence to support the complaint.

Within two days after the investigation has been completed, the SESA should prepare a report of its findings and send it to the Regional Office. Based on the SESA report, and any subsequent additional investigation the Regional Office may wish to conduct, the RA should make a determination as to whether a position for which H–2A certification determination (or certification redetermination) is sought is, in fact, vacant (after having been occupied) due to a strike, lockout, or other labor dispute involving a work stoppage. Prior to making this determination, the RA should consult by telephone with the National Office for concurrence.

When a positive determination has been made, the RA should then prepare a memorandum for the file indicating that a finding has been made and that the specific positions vacant because of the dispute will not be included in any otherwise positive H–2A certification determination or redetermination, and giving the reasons therefor. When the situation involves a redetermination matter, the RA's finding should also be transmitted to the appropriate INS District Office responsible for adjudicating employers' petitions for H–2A visas.

The role of the SESA in referring applicants to job orders when there is a dispute involved is governed by the regulations at 20 CFR 652.9, Establishment and Functioning of State Employment Services.

F. Farm Labor Contractors (Crewleaders) as Employers

The H–2A program and the implementing regulations are primarily constructed for the use of employers who own and/or operate a fixed-site establishment and who are seeking workers from out of the area to come to that fixed site. However, there is nothing in the statute or the regulations to preclude an employer who does not fit into this category from utilizing the program. Therefore, bona fide registered farm labor contractors may be eligible to apply for and receive H–2A certification.

Given the extent of the employer's responsibility under these regulations, it is doubtful that many farm labor contractors would apply for certification. Farm labor contractors would be required, as employers, to provide all the minimum benefits specified by the H–2A regulations, including the three-fourths guarantee and the offer of employment to U.S. workers who apply until fifty percent of the contract period has elapsed.

In order for a crewleader to be eligible for H–2A purposes, the crewleader must first meet all the requirements of the definition of "employer" set forth in the regulations at 20 CFR 655.100(b). It must be clear that a contractor will have an employer-employee relationship with the workers, and that the contractor will be responsible for hiring, paying, firing, supervising, or otherwise controlling the work of the employees. It would be advisable to determine, for example, if a contractor deducts Federal Insurance Contribution Act (FICA) withholdings, provides matching contributions, and transmits such to the Internal Revenue Service (IRS) under its own account number.

A farm labor contractor seeking H–2A certification must comply with all the other requirements of the regulations at 20 CFR Part 653 and 20 CFR Part 655, including the requirements that there be a precise anticipated starting date and ending date of employment, and that the anticipated number of days and hours per week for which work will be available must be stated. A vague, unconfirmed itinerary is not acceptable for H–2A filing purposes.

SESA and Regional Office staff should be careful to look behind any applications filed by farm labor contractors to ensure that the contractor is operating in accordance with MSPA requirements, and that the job opportunities for which workers are being sought are bona fide, and all the conditions associated with them comply with applicable laws and regulations. Consultations with ESA and with known fixed-site growers in the area of intended employment are recommended for this purpose.

G. Determining Legal Employment Status of Workers Referred

Under the provisions of IRCA, an employer is exempt from sanctions related to the hiring of an alien who is not authorized to work in the U.S. ". . . with respect to the hiring of an individual who was referred for such employment by a State employment agency . . . if the person or entity (employer) has or retains . . . appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in (the Act) . . . with respect to the individual's referral".

The participation of the SESAs in this employment verification and referral function is a permissible activity for SESAs to undertake, at their option, under their base Wagner-Peyser grant. Specific instructions governing the SESA role when a State wishes to participate are contained in INS regulations at 8 CFR Part 274a, Subpart A 274.6., November 9, 1987.

It is permissible for employers to specify on job orders that workers referred must possess the documentation required to enable the employer to comply with the employment verification requirements of IRCA. It is also permissible for employers to request that SESA's referring U.S. workers on job orders perform the employment verification function, and SESA's which have exercised the option of participating in

the activity should do so. However, it is not permissible for employers to specify on job orders that the SESA making referral *must* perform the function.

For H–2A certification purposes, if a referred worker is unable to produce the documents needed for an employer to comply with the employment verification requirements of the INS regulations, the employer would have a lawful job-related reason for not hiring the worker. Referred workers refused employment for this reason should not be counted as available for certification purposes.

(Appendices ommitted)

[FR Doc. 88–13185 Filed 6–10–88; 8:45 am]
BILLING CODE 4510-30-M

Federal Register

Monday
June 13, 1988

Part IV

Department of Education

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Guaranteed Student Loan, and Income Contingent Loan Programs; Campus-based Programs; Notice of Certified Need Analysis Systems for Academic Year 1988-89

DEPARTMENT OF EDUCATION

Perkins Loan (Formerly National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant, Guaranteed Student Loan, and Income Contingent Loan Programs; Campus-based programs

AGENCY: Department of Education.

ACTION: Notice of certified need analysis systems for academic year 1988–89.

SUMMARY: The Secretary of Education announces certified need analysis systems that institutions of higher education may use in calculating a student's financial need or expected family contribution during academic year 1988–89 under the Perkins Loan, College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG), Income Contingent Loan (ICL), and Guaranteed Student Loan (GSL) Programs.

An institution is not required to use a certified need analysis system. However, if an institution uses a certified need analysis system in the calculation of an expected family contribution for the 1988–89 academic year under the Perkins Loan, College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG) (known collectively as the campus-based programs), Income Contingent Loan, and Guaranteed Student Loan (GSL) Programs, the institution can be assured that the expected family contribution produced by the system will accurately reflect the expected family contribution described in Title IV, Part F, of the Higher Education Act of 1965, as amended (HEA).

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Richard P. Coppage, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue SW., Room 4018, ROB–3, Washington, DC 20202. Telephone (202) 732–4490.

Program Information

The campus-based and Guaranteed Student Loan programs are "need-based" student financial aid programs. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her expected family contribution, i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs.

Institutions participating in the ICL Demonstration Project must make ICLs reasonably available first to all eligible students who demonstrate financial need.

Part F of Title IV of the Higher Education Act of 1965 (HEA), after its amendment by the Higher Education Amendments of 1986, provides detailed formulas for determining a student's expected family contribution for the campus-based, ICL and GSL programs. The statutory formulas specify the criteria, data elements and tables for schedules of expected family contributions for these programs.

As authorized by the HEA and as a service to institutions, the Secretary certifies that an expected family contribution produced by a need analysis system listed in this notice accurately reflects the expected family contribution prescribed by Title IV–F of the HEA.

Each need analysis servicer whose system is listed below as certified by the Secretary is able to calculate an expected family contribution under Title IV–F of the HEA when an applicant provides the data elements necessary for that calculation in a complete and consistent manner. A need analysis servicer's system that performs this function is certified at Level 1.

Under Level 2, the need analysis servicer's system performs the function described under Level 1 and selects applicants for verification under ED instructions for that selection.

Under Level 3, the need analysis servicer's system performs the function described under Level 1 and calculates an expected family contribution under Title IV–F of the HEA, even when an applicant provides incomplete and inconsistent data, through the use of ED edits.

Under Level 4, the need analysis servicer's system performs the function described under Level 1 and calculates an expected family contribution under Title IV–F of the HEA even when an applicant provides incomplete and inconsistent data through the use of ED edits and to selects applicants for verification under ED instructions for that selection.

The following need analysis systems are certified at Level 1:

All-Calc
- American College Testing Program, 2255 North Dubuque Road, P.O. Box 168, Iowa City, Iowa 52243, (319) 337–1040

CARS Administrative Computer System
- CARS Information Systems Corporation, 4000 Executive Park Drive, Cincinnati, Ohio 45241, (513) 563–4542

COLLEAGUE
- DATATEL, 4375 Fair Lakes Court, Fairfax, Virginia 22033 (703) 968–9000

Electronic Need Analysis System, United States Department of Education
- Federal Student Aid Information Center, P.O. Box 84, Washington, D.C. 20044, (800) 333–4636

HESC–ABLE 1988–89
- New York State Higher Education Services Corporation, 99 Washington Avenue, Albany, New York 12255, (518) 474–8336

RCN Need Analysis
- Regents Computer Network, 150 Causeway Street, Boston, Massachusetts 02114, (617) 727–9500

SAM—Level 1
- Sigma Systems, Inc., 1508 Cotner Avenue, Los Angeles, California 90025, (213) 477–1421

The following need analysis systems are certified at Level 2:

Administrator
- EDTECH (formerly M-Data, Advanced Process Laboratories, Financial Analysis Service, and CompuGrant), 13464 Northland Drive, Big Rapids, Michigan 49307, (616) 796–8641

COLLEGIATE DATA SYSTEMS—FAMILY CONTRIBUTION AND TSC EDITS
- COLLEGIATE DATA SYSTEMS, 3909 Valley Stream Drive, Raleigh, North Carolina 27604, (919) 787–8263

CSA Financial Aid Calculator, 5000 Series
- Calculator Systems Associates, 1426, W. Sixth Street, Suite 206, Corona, California 91720, (714) 734–3818

CSA Financial Aid Calculator, 6000 Series
- Calculator Systems Associates, 1426, W. Sixth Street, Suite 206, Corona, California 91720, (714) 734–3818

DFAS LEVEL 2 NEED ANALYSIS
- Diversified Financial Aid Services, Inc., 2108 East Thomas Road #116, Phoenix, Arizona 85016, (602) 957–0784

National Education Centers
- National Education Centers, 1732 Reynolds, Irvine, California 92714, (714) 261–7606

NEED/3000 and PC–NEED
- Computing Options Company, 136 East Street, Frederick, Maryland 21701, (301) 662–5592

SAM—Level 2
- Sigma Systems, Inc., 1508 Cotner Avenue, Los Angeles, California 90025, (213) 477–1421

SNAP II (Traditional & Proprietary) Floppy Disk
EDTECH (Formerly M-Data, Advanced Process Laboratories, Financial Analysis Service, and CompuGrant), 13464 Northland Drive, Big Rapids, Michigan 49307, (616) 796–8641
THE Pell and F.C. System
Education Associates Computer Division, Inc., 2018 Naamans Road, Suite B–6, Wilmington, Delaware 19810, (302) 475–8036

The following need analysis systems are certified at Level 3:

RECALC
American College Testing Program, 2255 North Dubuque Road, P.O. Box 168, Iowa City, Iowa 52243, (319) 337–1040
SAM—Level 3
Sigma Systems, Inc., 1508 Cotner Avenue, Los Angeles, California 90025, (213) 477–1421
Student Aid Reporting and Analysis (SARA)
American College Testing Program, 2255 North Dubuque Road, P.O. Box 168, Iowa City, Iowa 52243, (319) 337–1040

The following need analysis systems are certified at Level 4:

ACT Student Need Analysis Service (SNAS)
American College Testing Program, P.O. Box 168, Iowa City, Iowa 52243, (319) 337–1040
ATLANTA STUDENT AID—"CALCPLUS"
Atlanta Student Aid, 5037 Bell Drive, Smyrna, Georgia 30080, (404) 434–3445
CareerCom Need Analysis System
CareerCom Corporation, 1801 Oberlin Road, Middletown, Pennsylvania 17057, (717) 939–1981
City University of New York
City University of New York, George Chin, University Director—Student Financial Assistance, 101 W. 31st Street, 7th Floor, New York, New York 10001, (212) 947–6000
College Scholarship Service/College Board Need Analysis System
College Scholarship Service/College Board, 45 Columbus Avenue, New York, New York 10023, (212) 713–8171
DATA-ED NEED ANALYSIS
Xitron Systems, Inc., 71 Route 206 S., Somerville, New Jersey 08876, (201) 526–6700
Director's Assistant, Financial Aid System Need Analysis Calc.
United Edcuation and Software, 3600 South Minnesota, Sioux Falls, South Dakota 57105, (605) 339–3788
EdDGE III + Need Analysis
Diversified Financial Aid Services, Inc., 2108 East Thomas Road #116, Phoenix, Arizona 85016, (602) 957–0784
EGA SUPER-COMP NEEDS SYSTEM
Earle, Grovatt & Assoc., Inc., 356 Main Street, Matawan, New Jersey 07747, (201) 290–9050
Family Contribution (FC) printed on the Student Aid Report, United States Department of Education
Federal Student Aid Information Center, P.O. Box 84, Washington, D.C. 20044, (800) 333–4636
FARE (Federal Aid Report of Eligibility) and NEED-LINK
EDTECH (formerly M-Data, Advanced Process Laboratories, Financial Analysis Service, and CompuGrant), 13464 Northland Drive, Big Rapids, Michigan 49307, (616) 796–8641
FAST
FAST, Inc. & Donald G. Watson and Assoc., 4015 E. Ashlan, Fresno, California 93726, (209) 222–6564
Graduate and Professional School Financial Aid Service
Educational Testing Service, Rosedale Road, Princeton, New Jersey 08541, (609) 734–5955
INAS, The Institutional Need Analysis System
College Scholarship Service/College Board, Suite 480, 2099 Gateway Place, San Jose, California 95110, (408) 288–6800
IRIS Needs Analysis Package
Michael V. Fox, Vice-President, Software Research Northwest, Inc., 17710 100th Avenue, S.W., Vashon Island, Washington 98070, (206) 463–3030
ISSC-AFSSA
Illinois State Scholarship Commission, Client Services, 106 Wilmot Road, Deerfield, Illinois 60015, (312) 948–8500
MICRO-FAIDS
College Scholarship Service/College Board, Suite 480, 2099 Gateway Place, San Jose, California 95110, (408) 288–6800
Mitchell Sweet & Associates Needs Analysis System
Mitchell Sweet & Associates, 1626 S. Edward Drive, Tempe, Arizona 85281, (602) 968–2900
Need Analysis Assistant Microcomputer System
Educational Testing Service, P–129 Educational Testing Service, Princeton, New Jersey 08541, (609) 734–1194
PHEAA Need Analysis and Packaging System
Pennsylvania Higher Education Assistance Agency (PHEAA), 660 Boas Street, Harrisburg, Pennsylvania 17102, (717) 257–2750
RGM Aid Mangement System
R. Gonzalez Management, Inc., 3409 W. Jefferson Blvd., Los Angeles, California 90018–3235, (213) 732–0573
RGM Instant Need Analysis System
R. Gonzalez Management, Inc., 3409 W. Jefferson Blvd., Los Angeles, California 90018–3235, (213) 732–0573
SAFE System
Information & Communications, Inc., 5601 La Jolla Blvd., La Jolla, California 92037, (619) 454–9765
SNAP (System for Need Analysis Processing)
Cybernetics & Systems, Inc., 550 Water Street, Jacksonville, Florida 32202, (904) 632–8100
Student Aid Management System (SAM)
Sigma Systems, Inc., 1508 Cotner Avenue, Los Angeles, California 90025, (213) 477–1421
USA Funds WhizApp
United Student Aid Funds, Inc., 8115 Knue Road, Indianapolis, Indiana 46250, (317) 576–1160

(Catalog of Federal Domestic Assistance No. 84.008, Perkins Loan (formerly the National Direct Student Loan) Program; 84.003, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Guaranteed Student Loan Program. N/A for Income Contingent Loan Program)

Dated: June 2, 1988.

Kenneth D. Whitehead,

Acting Secretary for Postsecondary Education.

[FR Doc. 88–13175 Filed 6–10–88; 8:45 a.m.]

BILLING CODE 4000–01–M

federal register

Monday
June 13, 1988

Part V

Federal Trade Commission

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Notice of Proposed Rulemaking

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Appliance Labeling Rule went into effect on May 19, 1980. Since that time, the Commission has obtained information indicating that modifications to the Rule should be considered. For example, because of interest in the Rule, in January 1983, Commission staff held a public meeting in Washington, DC, to gather comments on the Rule from manufacturers, retailers, consumers and consumer groups, state and federal agencies and other persons. The Commission has continued to receive informal suggestions about Rule modifications and improvements since that meeting. In addition, comments received during the Regulatory Flexibility Act review of the Rule contained useful suggestions on ways to modify the Rule.[1]

After considering all of the information received concerning possible Rule modifications, the Commission is proposing a number of specific changes in the Appliance Labeling Rule. The Commission is also seeking comment on several other parts of the Rule that may warrant changes, including a suggestion that the Rule be amended to permit manufacturers of covered products to label only display models. The Commission has also included a question on the effects, if any, of the appliance efficiency standards contained in recently enacted legislation. Finally, the Commission is seeking comment on whether the Rule's coverage should be expanded to include gas and kerosene space heaters.

DATES: Written comments must be submitted on or before July 28, 1988.

Persons desiring a public hearing on the proposed amendments should advise the Presiding Officer by no later than July 13, 1988. If hearings are scheduled, the date and time of the hearings, as well as the date for submission of prepared witness statements and exhibits, will be announced in a subsequent Notice.

ADDRESES: Written comments and requests for public hearings should be submitted to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202–326–3642. Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

Section 324 of the Energy Public and Conservation Act of 1975 (EPCA) [2] requires the Commission to prescribe labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances classified as "covered products" by section 322(a) of EPCA: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Before these labeling requirements may be prescribed, the statute requires the Department of Energy (DOE) to develop test procedure that measure how much energy the appliances uses. In addition, DOE is required to determine the representative average costs a consumer pays for the different types of energy available. Congress provided, in section 324(b)(5) of EPCA, that the Commission could exempt from coverage products in categories 1–9 if labeling is not technically or economically feasible, and products from categories 10–13 for the same reason or, alternatively, if labeling would not be likely to assist consumers in making purchasing decisions.

On November 19, 1979, the Commission issued a final Rule covering seven of the twelve appliance categories that were then covered by DOE test procedures: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.[3] The Rule applies to products manufactured after May 19, 1980. The Commission recently amended the Rule to include the category of central air conditioners and heat pumps.[4]

For most product categories, the Rule requires that dollar energy costs and related information be disclosed on labels and in retail sales catalogs. For three of the categories—room air conditioners, furnaces and central air conditioners—dollar energy costs are impractical as the primary energy usage disclosure, for reasons discussed below. For these products, energy efficiency ratings ("EER's") must be disclosed, either on the labels (for room air conditioners and central air conditioners) or on fact sheets (for furnaces).[5] The corresponding cost information must be disclosed on the label for room air conditioners, on fact sheets for furnaces and for central air conditioners on fact sheets or in a directory. These required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures. Even products that the Commission exempted from the Rule's labeling requirements must be tested in accordance with the DOE procedures before energy claims can be made. In addition, certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information.

II. The Modifications: Proposed Amendments and Questions

In today's **Federal Register** Notice, the Commission is: (1) Announcing and soliciting comments on two proposed amendments concerning furnace requirements; (2) announcing and soliciting comments on a proposed

---

[1] 50 FR 13820 (April 8, 1985).

[2] Pub. L. 94–163, 89 Stat. 871 (Dec. 22, 1975).

[3] 44 FR 66466, 16 CFR Part 305 (Nov. 19, 1979). The Statement of Basis and Purpose (SBP) for the Final Rule describes the reasons the Commission exempted the other categories of covered products. *Id.* at 66467–69. The SBP explains that the Commission concluded that Congress intended, through the statutory exemption criteria, to permit product categories to be excluded, "if the Commission found that the cost of the labeling program would substantially outweigh any potential benefits to consumers." *Id.* at 66467–68.

[4] 52 FR 46888 (Dec. 10, 1987).

[5] Generally defined, the energy factor is a measure of the useful output of an appliance's services divided by the energy input. When promulgating the test procedures, DOE, as required by EPCA, developed at least two measures of energy consumption for each appliance category, one, based on estimated dollar cost of operation, and one other—the energy factor. In the case of climate control equipment, DOE used the nomenclature currently followed by the industry to describe the energy factor for those products. Hence, the energy factor for room air conditioners is called the EER (energy efficiency ratio), for furnaces, the AFUE (annual fuel utilization efficiency), for central air conditioners and the cooling function of heat pumps, the SEER (seasonal energy efficiency rating); and for the heating function of heat pumps, the HSPF (heating seasonal performance factor). Under the Commission's Rule, all of these acronyms are referred to as the EER (energy efficiency rating) for the sake of simplicity. For the other appliances, this method of energy usage calculation is simply called the energy factor in the DOE test procedures.

amendment to the requirements for room air conditioners; and (3) soliciting comments on a number of proposals that may lead to amendments. In accordance with a directive in section 336(a) of EPCA, the Commission hereby affords interested persons the opportunity to present their views orally at a public hearing. Those interested in participating in a hearing should notify the Presiding Officer, in writing, by no later than July 13, 1988, at the following address: Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580.

A. Proposed Amendments to Energy Usage Disclosure for Furnaces

1. Background: Current Furance Labeling Requirements

Section 324(c) of EPCA mandates that two disclosures appear on labels. The first is the estimated annual operating cost of the product. The second is a range of estimated annual operating costs for comparable products. An alternative measure of energy consumption (instead of operating cost) may be used if the Commission determines that the disclosure of estimated annual operating costs is not economically feasible or that labeling with energy costs is not likely to assist consumers is making purchasing decisions.

During the promulgation of the original Rule, the Commission concluded that, for home heating and cooling equipment (which includes room air conditioners, central air conditioners and furnaces), the disclosure of energy usage required by § 305.11(b) of the Rule should be in the form of an energy efficiency rating instead of an estimated annual cost of operation. The Commission reached this conclusion because the use of these appliances differs widely due to the variety of climate conditions in the United States. Therefore, a meaningful average energy cost for the operation of these product categories would be very difficult, if not impossible, to quantify on a national basis.

The energy efficiency rating disclosures for these products are derived through the DOE test procedures and are independent of climatic effects on energy usage. Cost information must still be disclosed, but not as the primary energy usage disclosure. It appears in the form of cost grids below the primary EER disclosure on the room air conditioner label.

For furnaces, the Commission determined that energy efficiency and cost information was too complex to disclose on a label and, therefore, was not likely to assist consumers in making purchasing decisions.[6] Further, because consumers often buy from contractors and are unlikely to see specific furnace units before purchase, the Commission determined at that time that labels on furnaces would not be an effective disclosure format. Instead, the Commission required the EER and cost information to be disclosed on a separate energy fact sheet instead of on a label attached to the product. A different type of label containing general energy-saving tips (instead of energy usage information) and referring the consumer to the fact sheet must be affixed to each furnace.

The fact sheets show the various combinations of components available [7] and the overall efficiency of any set of component combinations. In addition, the fact sheets provide cost grids for estimating what that "system" could cost the consumer to operate, depending on geographic location and utility rate structures.

The specific requirements of § 305.11(b)(3) of the Rule are that each fact sheet must show:

The name of the manufacturer or private labeler;
The model number of the furnace;
The capacity of the furnace;
The EER of the furnace;
The applicable ranges of comparability;
Placement of the particular furnace on the range scale;
Yearly cost information; and
A statement that costs and EER's are based on standard government tests.

Retailers must make fact sheets available to customers at their place of business. If retailers make sales away from their place of business, they must show fact sheets to their customers before the sale.

For central air conditioners, the Commission recently adopted a different labeling format. The labels on central air conditioners contain the primary energy disclosure, the EER, and its associated comparability range. They also direct consumers to *either* fact sheets *or* directories for detailed cost information. The Commission now believes that this alternative disclosure system may be an efficient way to provide energy information for furnaces.

[6] To communicate energy-usage information, including associated costs, relating to a "family" of similar furnaces with the same basic structure and capacity (differences stemming from various ignition systems, burners or venting techniques) would have required a much larger label that was likely to be confusing to consumers.

[7] For example, whether the furnace would be available with a vent damper, standby pilot, automatic ignition, etc.

2. The Directory Option Amendment

The proposed directory option for furnace manufacturers is identical to what the Commission is allowing for central air conditioner manufacturers. Under this option, manufacturers would comply with the Rule's disclosure requirements by listing required information in a trade association directory, rather than on fact sheets. This option was proposed by the Gas Appliance Manufacturers Association (GAMA) [8] and others during a rulemaking proceeding initiated in 1981 to consider whether two new types of furnaces [9] should be included under the Rule's coverage. The Commission rejected GAMA's proposal because it went beyond the scope of the rulemaking, which was conducted for the sole purpose of determining whether the two new types of furnaces should be covered under the Rule.[10] For reasons detailed below, the Commission believes that GAMA's proposal now merits serious consideration and publishes a proposed amendment to implement it.

At the time of this proposal, GAMA was about to launch a voluntary certification program for furnace manufacturers. The program, which has since been put into effect, is open to all manufacturers of residential-size furnaces. The program involves participating manufacturers submitting to GAMA energy efficiency information derived from tests performed by using the DOE test procedures. GAMA conducts verification testing and maintains an internal enforcement mechanism.[11] The program also includes the publication and distribution of a Directory listing participating manufacturers along with the DOE test-derived efficiency and annual cost information on each of the models they produce.

[8] The Gas Appliance Manufacturers Association is one of the two trade associations representing members of the furnace manufacturing industry. The other principal furnace industry trade association is The Hydronics Institute, Berkeley Heights, New Jersey.

[9] Pulse combustion furnaces and condensing furnaces. The Notice of Proposed Rulemaking was published at 46 FR 38105 (July 24, 1981).

[10] 52 FR 46883 at 46894 (Dec. 10, 1987).

[11] GAMA has randomly selected appliance models tested by an independent laboratory to ensure the accuracy of reported energy efficiency information. In addition, if one GAMA member challenges the validity of another member's energy usage figures in the Directory, GAMA will investigate and determine whether the claimed results are accurate. If they are inaccurate, GAMA will publish the corrected figures in the next issue of its Directory, together with the inaccurate figures they replace. GAMA will also note that the rerating is done involuntarily, if such is the case.

GAMA contended that this Directory would be superior to the existing fact sheets as an energy usage disclosure system because it would contain information on the majority of models available in the marketplace. This, GAMA suggested, would enable consumers to compare, in one booklet, the various efficiences and estimated energy costs of many models without having to amass a collection of fact sheets from different retail outlets. GAMA indicated that the comparability ranges for furnaces would appear in the front of the Directory in the form presently published by the Commission in the **Federal Register**. In addition, the ranges would be broken down as to furnace type. For example, there would be separate ranges for horizontal or outdoor types of furnaces.

GAMA also suggested that the required labels on individual furnace units could direct consumers to the Directory for efficiency and cost information, rather than to fact sheets. GAMA would distribute the Directory to all GAMA members in quantity, and would make reference copies available to all public libraries.[12] For consumers and others, the Directors would be available at their production cost to GAMA, which was estimated at around $5 a copy.

GAMA contended that this plan would represent a significant potential savings to the industry in production costs of fact sheets. During the rulemaking to include additional furnace types, GAMA estimated that its cost of producing the Directory would be equal to the cost to one fair-sized manufacturer of producing all its required fact sheets.

To assist manufacturers and the Commission's staff, GAMA also offered to act as a central collection agency for all required submissions of data under § 305.8 of the Rule. Under this plan, manufacturers submit test results to GAMA. GAMA uses the information to prepare the Directory and submits the information to the FTC.[13] Participants in the program include the manufacturers of oil-fired furnaces and boilers as well as manufacturers of gas-fired products. Electric furnace manufacturers have not elected to participate in the program or the directory.[14] Manufacturers who choose not to submit information to GAMA are still required, under EPCA and the Commission's Rule, to submit the required information directly to the Commission.

In sum, GAMA contended that its proposal, if adopted, would:

(1) Provide consumers energy usage information on the majority of available furnace models in one document;

(2) Simplify the data collection and range publication job; and

(3) Result in savings to the industry, and, hence, to consumers.

The Commission's staff originally believed that this alternate proposal fell short of the plan for the dissemination of energy information envisioned in EPCA. In the August, 1983 Furnace Staff Report, staff noted the following objections:

(1) The proposal did not provide for a Directory in every retail outlet;

(2) The proposal envisioned a one-time listing of all the ranges of comparability at the front of the Directory. This did not provide for a disclosure of each individual product's efficiency on the scale, as required by the Commission's Rule;

(3) Staff was concerned that enforcement problems could result as the result of errors in the Directory attributable solely to GAMA;

(4) The Directory could potentially confuse consumers by virtue of its sheer bulk. Since products would be listed by manufacturer, rather than by effeciency, consumers would need considerable skill to use such a Directory;

(5) Since participation in the GAMA program would be voluntary, fact sheets would still be an option. Staff was concerned about the lack of uniformity between these two types of disclosures.

In commenting on the Furnace Staff Report, GAMA contended that it has modified, or plans to modify, the Directory to respond to some of these concerns and that some other concerns are not well-founded. For example, GAMA planned to add a feature to the Directory that would enable consumers, by means of an explanation and directions in the front of the Directory, to place a furnace on an efficiency range scale provided in the Directory. According to GAMA, this feature, which has been included in Directories in the meantime, helps consumers evaluate furnaces. GAMA also contended that the Directories are well distributed. It noted that 20,000 copies of the Directory were being provided annually. Further, in 1986, GAMA began distributing copies through the public library system. GAMA also disagreed that the Directory would be too voluminous for consumers to deal with, and stated that all the information provided on the many products listed was useful and meaningful to today's increasingly sophisticated consumers.

The Commission's review of the Directory indicates that, with the new directions GAMA provides, the Directory is easier to use and, particularly with the assistance of a salesperson, is likely to be an efficient way for consumers to compare furnaces. Further, since the majority of manufacturers are participating in GAMA's program, the concern regarding uniformity because some manufacturers will have fact sheets has substantially abated. Further, the Directory does not appear to pose any special or difficult enforcement issues. GAMA's verification program and internal enforcement mechanism make it likely that errors or misrepresentations will be identified quickly. Further, because the Directory is published semi-annually, errors can be corrected within six months of their appearance. Consequently, in view of the changes GAMA has made and other changes GAMA has indicated a willingness to make, such as including the Commission-published ranges in the Directory, the Commission is proposing to amend the Rule to include the directory option. The proposed amendment includes two minimum distribution requirements—(1) Distribution to substantially all furnace sellers and (2) distribution to others at cost. These requirements parallel the central air conditioner directory option requirements.

3. Product-Specific Labels

In addition to the directory option, the Commission is proposing to modify the disclosure requirements for furnaces to require labels like those now required for central air conditioners. Central air conditioners must bear a label that (1) shows energy efficiency information that is specific to the product to which it will be attached, (2) shows a "generic range" (discussed below) for all central air conditioners, instead of a range for products of a size similar to the labeled model, and (3) contains stronger langauge referring consumers to fact sheets or a directory for additional information. The label does not contain a cost grid, but directs consumers to a directory or fact sheets for cost information. This differs from the label presently required for furnaces, which merely contains general energy-saving tips and refers consumers to the facts sheets for specific energy usage information. The Commission chose this different labeling scheme for central air

[12] A GAMA Newsletter mailed in May, 1986, indicates that Directories are currently being mailed to all public libraries, including branches.

[13] The Commission's staff agreed to this proposal and accepts the GAMA Directory as a submission under § 305.8 for all participating members.

[14] GAMA has informed the staff that it could accommodate requests from manufacturers wishing to include their electric furnaces in GAMAs certification program, which includes the directory.

conditioners to ensure that consumers would have at least minimum energy information, even if they never saw the fact sheets. The Commission is proposing that the type of label that is now mandatory for central air conditioners be required for furnaces.

In lieu of the current "energy-savings tips" label, each proposed furnace label will show the EER of the specific furnace model to which it is attached. (The Commission, however, seeks comment on alternatives to disclosing just the EER of the specific model. For example, whether several EER's could be displayed on the range indicating various features available, which would allow that label to be used on all the relevant models). Directly below the EER, the label will contain a "generic" range of EER's for *all* furnaces that use the type of fuel (gas, oil or electricity) used by the labeled model, rather than the range for models of a similar capacity, as the Rule presently requires (on fact sheets).[15] According to the energy efficiency data the Commission has received and published, as well as the DOE engineers responsible for promulgating and maintaining the energy usage test procedures, there is roughly the same spread of efficiencies throughout all the various capacities. Thus, a single range for any given fuel type encompassing this spread, rather than ranges for fourteen sizes or capacity groupings, is sufficient to inform consumers of what efficiencies they can generally expect to find. Finally, like the central air conditioner labels, the furnace labels would contain stronger language referring consumers to fact sheets or directories for further information regarding efficiency and operating costs.[16]

Thus, under the proposed amendments, to the extent that consumers shopping for furnaces may see display models (if not the specific models they would obtain), they would always see the minimum information required by EPCA (that is, the EER of the product and range information).[17] Further, because the labels state that the availability of additional information is required by Federal law, the proposed labels will increase the likelihood that the additional cost information required by the Rule will be seen by consumers. To the extent that consumers do not see a labeled model before purchase and are not provided required information on fact sheets or in a directory, the fact that the labels can be seen post-sale could aid the Commission's enforcement efforts. Consumers seeing the information on the label post-sale would learn that certain information was not made available to them pre-sale. This may lead to complaints that will help the Commission identify non-complying sellers.

For the reasons stated above, the Commission is proposing two amendments relating to furnaces: (1) That furnace manufacturers be afforded the option of being listed in an industry directory instead of preparing fact sheets; and (2) that furnaces bear product-specific labels like those required for central air conditioners, which will include (a) the EER of the product, (b) information on the range of energy efficiency for all furnaces that use the same type of fuel as the labeled model, and (c) stronger language referring consumers to either fact sheets or a directory for additional information. In addition to seeking comments on the merits of the proposed amendments, the Commission requests information regarding whether, and to what extent, the proposals will reduce the paperwork or other burdens associated with the Rule.

B. Proposed Amendment Creating Generic Ranges for Room Air Conditioners

As just mentioned in connection with the discussion of product-specific labels for furnaces, the Commission is proposing that the Rule be amended to require "generic" ranges for furnaces, instead of fourteen ranges per fuel type, according to capacity rating.[18] The energy efficiency range information the Commission has analyzed and published indicates that generic ranges would also be appropriate for room air conditioners. The DOE engineering staff confirms this view. Because there would be only one range for these products, instead of thirty-five, the paperwork burden associated with labeling these products should be reduced significantly. Consequently, the Commission is proposing to amend the Rule to create a single generic range encompassing the efficiencies of all room air conditioners.

The Commission solicits comments on this proposed amendment and the extent of the possible reduction in paperwork burden that will result from the inclusion of generic ranges for room air conditioners. The Commission also seeks comment on whether generic ranges or a reduction in the number of ranges (for example, where there are many ranges for a product, whether the two smallest, or two largest, categories should be combined) for other product categories would be appropriate, and, if so, whether such a reduction in the number of ranges would reduce the compliance burden of small entities.

C. Other Issues on Which Comment is Sought

There are several additional changes that industry members and others have frequently suggested. To obtain more information on and to determine the extent of interest in these proposals, the Commission is seeking comment on the six issues described below. In addition, the Commission is soliciting information on whether to expand the Rule's coverage to include a category of products for which the Department of Energy has recently developed test procedures, and information on the effects, if any, of newly enacted federal minimum efficiency standards for appliances. Finally, the Commission is seeking comment on any issues of fact, law or policy that the public may believe has a bearing upon the proposed amendments or any other possible changes to the Rule.

1. Energy Usage Descriptor or Labels

As previously mentioned, for five categories of appliances, the Appliance Labeling Rule requires a disclosure of energy cost information on labels and in

---

[15] There would be three "generic" ranges: one for all furnaces fueled by gas, one for oil-fueled and one for electric furnaces. These three ranges would replace the forty-two ranges presently required—fourteen ranges, according to capacity rating (in Btu's per hour produced), for each of the three fuel types. This proposal preserves the benefits of the Rule while simplifying label printing and reducing its paperwork burden.

[16] The presently required furnace labels suggest that consumers ask for fact sheets, while the proposed labels would use the language of the central air conditioner labels:

Federal Law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information regarding the efficiency and operating cost of this equipment. Ask for this information.

[17] Because many consumers may not see actual furnace units prior to purchase, the proposed rule requires that the EER and range information appear both on the label and in fact sheets or directories. For the same reason, the Commission proposes to amend similar provisions of the current rule pertaining to central air conditioners to require that both the EER and range information appear on the label and in fact sheets or directories. (Because the range information appears on the labels for central air conditioners, the Commission did not require that range information be duplicated in fact sheets or the directory.) The Commission solicits comments on whether the proposed amendment mandating provision of duplicate range information for furnaces and central air conditioners will provide greater net benefits to consumers than the provision that the range information appear only on the label.

[18] The energy usage disclosure scheme recently promulgated by the Commission for central air conditioners and heat pumps also includes generic ranges for the same reasons.

retail sales catalogs.[19] The cost information must be disclosed as the estimated annual dollar cost of operation. This cost disclosure must be based on standardized test procedures developed by the Department of Energy.

The Rule also requires that each required label for these appliance categories show a range of estimated annual costs of operation or efficiencies for all models of a size or capacity comparable to the labeled model.[20] The ranges are published annually in the Federal Register if the upper or lower limits of the range change by 15% or more from the previously published range. If a revised range is not published, a notice must be published that the prior range is still applicable for the next year.

Industry members and others have frequently contended that the use of a dollar figure as the primary disclosure (or "descriptor") of energy usage is confusing and inappropriate.

First, although most appliance models do not change every year (a typical product line may change once every three years), DOE's energy cost calculations change annually because of changes in fuel costs. If this change affects the upper or lower limits of the ranges by 15% or more, new labels are required. Consequently, identical appliances may have labels showing different costs of operation, depending on when they were manufactured. For example, a floor model may show an operating cost and range of costs that are different from the cost and range on an identical, but newer unit delivered to the consumer's home from the warehouse. Similarly, if more than one model is displayed from a product line, it is possible that identical floor models could display different labels; or, models with different features could have labels based on different cost figures, making it difficult for average consumers to compare their energy usage. This is likely to be confusing to consumers as well as retailers. In addition, during the Regulatory Flexibility Act rulemaking, some manufacturers commented that, as a result, some dealers have had to sell floor samples with "outdated" labels at a discount.

Second, when DOE's representative energy costs have changed, but the ranges remain in effect for more than one year (because the ranges have not changed by more than 15%), some consumers, who are familiar with energy cost information, may think the cost information on the labels in inaccurate.[21] Therefore, consumers may be reluctant to use the information in making purchasing decisions. It has already been the case with some appliances that the ranges have not changed for several years in a row. Because the ranges are unchanged, the labels remain the same. This means that the earlier DOE cost figures are still used to compute the cost disclosures for these products.

For products presently labeled with the estimated dollar cost of operation, an alternate energy usage descriptor based on the DOE test procedures may be kilowatt-hours used, or therms used, or both, depending on whether electricity or natural gas or both is consumed when the product is run.[22] For oil-fueled water heaters, a gallon descriptor may be more appropriate. Like an energy factor, such as the EER for furnaces, room air conditioners and central air conditioners, the kilowatt-hour, therm or gallon usage of a product remains constant unless the energy usage characteristics of the product change. However, unlike an EER, with a kilowatt-hour, therm or gallon disclosure, the cost of operating the specific product can be calculated when the per kilowatt-hour, therm or gallon cost is known. General cost information using these terms is already contained in the cost grid.

To obtain more information about this issue, the Commission solicits comment on whether, and to what extent, the use of the estimated annual dollar cost of operation as the primary energy usage descriptor on labels undermines the credibility and usefulness of the labels to consumers when energy costs have changed, but the labels have not. To what extent does this place additional burdens or costs on manufacturers or retailers? Would another way of disclosing energy usage information—for example, kilowatt-hour, therm or gallon usage or an energy factor—convey information more effectively to consumers than the dollar cost disclosure does? If so, what disclosure method would be most appropriate, and would it be compatible with the applicable DOE test procedure?

2. Product Categories

Under the current Rule, product categories have been established for the various covered products in the appendices to the Rule, which list the ranges of comparability.[23] For example, there is only one category for refrigerators, one for refrigerator-freezers, one for freezers, and one for room air conditioners.

It has been frequently suggested by various manufacturers, trade associations and others that these categories are too general and all-inclusive, and that consumers would receive better and more precise information if specific sub-categories were created for refrigerators, refrigerator-freezers, freezers and room air conditioners. For example, for room air conditioners, instead of one set of ranges for all these products, ranges have been suggested for window units, for built-in units, for casement units, etc. For refrigerator-freezers, separate ranges have been suggested for products with partial automatic defrost and for products with fully automatic defrost. Although this proposal would increase the number of types of labels that would have to be produced, it could assist consumers for facilitating comparison shopping for the particular type of appliance desired.

In order to gather more information on this subject, the Commission asks the following questions: Would dividing refrigerators, refrigerator-freezers, freezers and room air conditioners into several more sub-categories, for example, manual defrost, semi-automatic defrost, and automatic defrost for refrigerator-freezers, chest and upright for freezers, and window units, built-in units and casement units for room air conditioners, assist consumers in considering energy consumption aspects of their purchasing decisions? If

[19] These are: refrigerators, refrigerator-freezers, dishwashers, clothes washers and water heaters.

[20] For the five products for which the main energy usage descriptor is expressed in dollars, the range figures also must be expressed in dollars. The dollar cost information that is obtained by following the DOE test procedures is derived by using National Average Representative Unit Costs for energy which, as required by section 323(b)(2) of EPCA, DOE must develop and provide to manufacturers. These energy cost figures are incorporated into section 305.9 of the Commission's Rule.

[21] Unfortunately, some industry members and consumer groups have reported that it appears consumers are reacting to "out-of-date" labels by not using the information in their purchasing decisions, even though the labels are not designed to provide exact cost information (they are designed to provide information with which to compare similar products).

[22] Refrigerators and freezers run on electricity. Clothes washers and dishwashers, while they run on electricity, consume hot water (when being tested under the DOE tests) and the energy used to heat the water accounts for approximately eighty percent of the energy use of the product. The labels for these products already contain two energy descriptors—one based on the dollar cost with an electric water heater and the other for a gas water heater. Under the proposal, the two sets of dollar figures would be replaced with kilowatt and therm figures. Labels on water heaters would express energy in terms of kilowatt-hours, therms or gallons (for oil-fueled units).

[23] The specific sub-categories for all covered products were established by the Commission in consultation with DOE (see Appendices A through G to 16 CFR 305).

so, what subcategories should be established? Would the possible benefits of this proposal outweigh any additional burdens (please describe or quantify, if possible) it would entail?

Would such a division encourage energy conservation? If so, how?

3. Label Adhesion Strength

Section 305.11(a)(4)(i) of the current Rule specifies the paper stock and minimum peel adhesion capacity of labels for covered products. In addition to requiring that adhesive labels be applied "* * * so they can be easily removed without use of tools or liquids, other than water," this section requires that label adhesive must have "* * * a minimum peel adhesion capacity of 24 ounces per inch width."

Some industry members have commented that this second specification is too high, thus making the labels too difficult to remove, and that a better approach would be either to eliminate this specification or reduce the adhesion capacity figure.

The Commission would like to have comment on whether the minimum peel adhesion capacity for labels set forth in § 305.11(a)(4) of the Rule should be lowered. If so, what should the minimum peel adhesion capacity be? Is there a performance standard that could be used in lieu of a specified minimum peel adhesion capacity?

4. Directory Option for Water Heaters

GAMA has suggested that the "Directory Option," which the Commission is proposing as an option for manufacturers of furnaces, be made available to manufacturers of water heaters. Appropriate changes to the labeling requirements for these products also would have to be considered in conjunction with this proposal. For example, the current labels, which contain the estimated annual cost of operation, range information and a cost grid, could be replaced with labels with less information and a reference to a directory for additional information.

The Commission solicits comment on whether amending the Rule to give manufacturers the option of replacing the current label with one that provides no energy usage information, or limited information, but directs consumers to an industry directory would increase the likelihood that consumers would be made aware of the energy usage of these products. Would this proposal reduce the costs of complying with the Rule, and if so, to what extent?

5. Labeling Display Models Only

The Maytag Company has suggested that the Rule be amended to permit manufacturers of covered products to label only display models. The Commission views this proposal as limited to display models in retail outlets. Appliances sold as part of new homes would all have to be labeled: it would not be sufficient to label only the appliances in a model home. The purpose of this proposal is to reduce the burden and cost to manufacturers of labeling all units while providing the public with the information required by the Act. The Commission has interpreted EPCA as requiring all models of covered products to display a label containing the energy usage information required by the statute, and, accordingly, the Rule implementing the Act requires each unit to be labeled.[24] In order for the Rule to be changed, the statute would have to be amended. Under section 6(f) of the Federal Trade Commission Act, the Commission can prepare special reports to Congress and submit recommendations for additional legislation.

Before determining whether to begin this process, the Commission seeks public comment on whether an option to label display models only would provide the same, or greater, net benefits to consumers as do labels on all units. How should "display models" be defined?

Would such an option reduce the paperwork burden or other costs of compliance with the Rule?

How could manufacturers assure that all display models were labeled properly? If this amendment were adopted, should the legal responsibility for compliance remain at the manufacturer level or should it be shifted to the retailer level? If legal responsibility were shifted to the retailer level, how would this affect the Commission's ability to enforce the Rule?

Would retailers be willing to accept legal responsibility for assuring that all display models are properly labeled?

6. Proposal to Include Certain Unvented Heaters

EPCA requires that the Commission prescribe labeling rules for any products for which the Department of Energy (DOE) has published a final test procedure to determine energy usage.[25] Section 324(a)(1) of EPCA provides that the Commission shall prescribe labeling rules for the categories of products that include unvented heaters. However, under section 324(b)(5), the Commission can exempt such products from the labeling requirements, if labeling would not be technically or economically feasible. But, even products exempted from the Commission's labeling requirements must be tested according to DOE test procedures in order to make energy claims.

Because DOE has published a final test procedure for unvented heaters (or "space heaters" that do not vent combustion gases to the outside) using natural gas, propane and kerosene,[26] the Commission is considering labeling these products. (The Commission previously considered labeling electric space heaters, for which a DOE test procedure was available earlier, and exempted these products.) Because these products are not vented to the outside and all the heat produced as the result of fuel utilization remains in the area being heated, they are virtually 100% efficient. In addition, they are not major users of energy, which suggests that comparative information on the cost of energy consumed may be of little use to consumers.[27] The economic benefit from labeling these products may not justify the cost and, therefore, be economically feasible. The Commission has previously exempted products from EPCA's labeling requirements on this basis.[28]

The Commission seeks comment on whether (and, if so, why) unvented oil, gas or kerosene heaters fall within the statutory exceptions discussed above.

If the Commission were to require labeling for unvented oil, gas and kerosene heaters, what labeling format and measure of energy efficiency or usage would be appropriate for these products? What would be appropriate size or capacity groupings for these products for purposes of establishing ranges of comparability?

---

[24] Section 324(c)(1) states that "* * * a rule prescribed under this section shall require that *each* covered product in the type or class of covered products to which the rule applies bear a label which discloses * * *." (emphasis added).

[25] Under section 323(a) of EPCA, DOE is directed to promulgate test procedures for measuring the energy usage of 13 enumerated product groups, including unvented heaters.

[26] 49 FR 12148 (March 28, 1984).

[27] This distinguishes these products from electric furnaces, which are major users of electricity.

[28] For example, the Commission exempted electric space heaters because the benefits to consumers of labeling these products did not outweigh the additional costs to industry members and consumers and, therefore, was not economically feasible. The cost of testing and labeling was found to be substantial and would increase the products' cost by about 3%. The evidence also did not indicate that labeling would provide information enabling consumers to make more informed decisions because these products are essentially 100% efficient in producing heat and operate with little variation in energy costs. 44 FR 66466 at 66468 (Nov. 19, 1979).

7. The National Appliance Energy Conservation Act

On March 17, 1987, the President signed the National Appliance Energy Conservation Act (NAECA),[29] which establishes minimum efficiency standards for a number of categories of appliances, including the appliances covered by the Commission's Rule.[30] NAECA provides that the existing DOE test procedures, which are used by the industry to comply with the Commission's Rule, will be used to determine compliance with its efficiency standards, and that the standards program will be administered by DOE.

The standards, which take effect at staggered intervals by appliance type over the next four years, will have differing effects on the various categories of appliances. For example, for dishwashers and clothes washers, the standard will require that each model be equipped with a switch that enables consumers to bypass the extra water heating function or the drying function. Since compliance merely requires the installation of a switch, few, if any, models of these appliances are likely to be eliminated from the marketplace. To achieve the standards for the other categories, however, significant engineering modifications may be necessary.

The possible elimination of some of the appliance model population at the lower end of the efficiency scale (or higher end of the operating cost scale), as well as the resultant contraction of the ranges for some appliance categories (even if for only a few years), calls into question whether the Commission's Rule informing consumers of energy usage differences among the remainder will continue to be useful or justifiable in its present form for all the presently covered appliance categories.

The Commission is interested in receiving any comments on whether the Commission's Rule should be repealed or modified in light of NAECA. Specifically, the Commission seeks comment on what effect NAECA's standards will have on the various appliance categories covered by the Commission's Rule. Will a change in appliance models have a bearing on the Rule's ranges of comparability, or on the usefulness of comparative energy usage information in the form presently required by the Rule? Will any such effects be modified over time and, if so, how?

Assuming that one of the results of the standards will be that fewer applicances will be available for some categories, due to the failure of some models to meet the minimum standards, are there any product categories that will be so significantly and permanently affected that the Rule should be amended to modify the ranges for these products or to exclude them altogether? [31]

Section A—Invitation to Comment

All interested persons are hereby notified that they may comment on any issue of fact, law or policy that may have bearing upon the proposed rules. Written comments should be addressed to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580; they will be accepted until July 28, 1988. To assure prompt consideration, comments should be identified as "Appliance Labeling" and furnished, when feasible and not burdensome, in five copies.

While the Commission welcomes comments on any issues that may have bearing upon the proposed rules, there are questions that appear at the end of the discussions of each issue mentioned upon which the Commission particularly desires comment. All comments and testimony should be referenced specifically to either the Commission's questions or the section of the proposed rules being discussed. The issues of particular interest to the Commission concerning the proposed amendments are identified in the discussion of the amendments in Part II, A and B of the Notice. Other issues upon which the Commission is particularly interested in receiving comments are in Sections C, E and F of the Notice.

The Commission requests that commenters provide representative factual data, in lieu of anecdotal experiences. Individual firms' experiences are relevant to the extent they typify industry experience, in general, or that of similar-sized firms. Comments opposing the proposed rules or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data that indicate why the alternatives would better serve the purposes of the proposed rules. Comments should be supported by a full discussion of all the relevant facts and/or be based directly on firsthand knowledge, personal experience or general understanding of the particular issues addressed by the proposed rules.

Before adopting these proposed rules as final rules, consideration will be given to any written comments timely submitted to the Presiding Officer and on the record of the hearing, if one is held. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission Regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Public Reference Room 130, Federal Trade Commission, 6th and Pennsylvania Ave. NW., Washington, DC 20580.

Section B—Public Hearings

Persons desiring a public hearing on the proposed amendments should notify the Presiding Officer by no later than July 13, 1988. If there is interest in a hearing, it will take place in Room 532 of the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, Northwest, Washington, DC, at a time and date that will be announced in a subsequent notice. If a hearing is held, persons desiring an appointment to testify will be required to submit to the Presiding Officer a complete statement in advance. This will be entered into the record in full. However, as a general rule, oral statements should not exceed ten minutes. There will be no opportunity for interested persons to cross-examine witnesses. Further instructions to witnesses will be contained in the notice announcing the hearing.

Section C—Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with Henry B. Cabell, the Presiding Officer, who is responsible for the orderly conduct of the proceeding and who shall have all powers necesary to that end, including the authority to rule on all motions or petitions filed.

Applications for review of a ruling will not be entertained by the Commission prior to its review of the record unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling ground for difference of opinion and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that

[29] Pub. L. 100-12, 101 Stat. 103 (1987).

[30] In addition to the appliances either covered by or exempted from the Commission's Rule, NAECA also covers pool heaters.

[31] As mentioned earlier, Congress provided, in section 324(b)(1) of EPCA, that the Commission could exempt from coverage products in categories 1-9 if labeling is not technologically or economically feasible, and products from categories 10-13 for the same reason or, alternatively, if labeling would not be likely to assist consumers in making purchasing decisions. The categories, as enumerated in section 322(a) of EPCA, are: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces.

subsequent review will be an inadequate remedy.

Section D—Post Comment Period or Hearing Procedures

Interested persons will be afforded 20 days after the close of the hearing, or the close of the comment period if no hearing is held, to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding officer will reject all submissions that are essentially additional written comments, rather than rebuttal. If a hearing is held, the 20-day rebuttal period will commence when the final transcript of the hearing is placed on the public record by the Presiding Officer.

After the close of the rebuttal period, staff will analyze the evidence on the record and prepare and submit a recommendation for the final rule.

Section E—Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis (5 U.S.C. 603–604) are not applicable to this document because it is believed the amendments, if promulgated, "will not have a significant economic impact on a substantial number of small entities" (5 U.S.C. 605).

The proposed amendments relating to energy usage disclosures for furnaces will not have a significant impact because the two proposed changes are likely to offset each other. To the extent that manufacturers will have to prepare the product-specific labels, instead of the labels presently required, they will incur somewhat greater printing expenses. This will be offset, to some extent, by the fact that they will be able to avail themselves of the option to disclose required information in an industry directory and not prepare fact sheets. Overall, there will most likely be a diminuation of printing expense to firms of all sizes.

The proposed amendments relating to the creation of generic ranges for room air conditioners will not have a significant impact because the amendments would result in the same reduction in compliance burden to all affected industry members with no imposition of additional cost. The reduction of the number of room air conditioner ranges from thirty-five to one will mean far less variety in labels produced, which will translate to a savings in compliance cost.

Because these changes are not likely to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act and the rules implementing it, a regulatory analysis is unnecessary. If the comments on the other issues raised in this Notice lead to proposed amendments, the Commission will consider whether an analysis under the Regulatory Flexibility Act is necessary.

The above conclusions are based on information presently available to the Commission and its staff. The Commission requests any information that would bear on the question whether the amendments proposed today would have a significant economic impact on a substantial number of small entities. Subsequent to the receipt of such comments, the Commission will decide whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, it is certified, under the provisions of section 5 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Section F—Paperwork Reduction Act

The Appliance Labeling Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the rule implementing the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501–3520. In 1984, the Rule was reviewed and assigned OMB Control No. 3084–0069. This reduction would be due primarily to allowing furnace manufacturers to use the directory option instead of distributing fact sheets. Because the proposed changes to the Appliance Labeling Rule modify existing labeling and recordkeeping requirements, they have been submitted to the Office of Management and Budget for review as required by §1320.13 of the PRA rules. The Supporting Statement submitted to OMB estimates that the adoption of the proposed amendments would reduce the paperwork burden of the Rule by 6,500 burden hours, or approximately 5%. Comment on the information collection aspects of the proposed amendments should be addressed to: Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the Request for OMB Review under the Paperwork Act may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

Section G—Proposed Amendments

PART 305—[AMENDED]

§ 305.11 [Amended]

1. Accordingly, it is proposed that Part 305 be amended by the addition of the following sentence at the end of §305.11(a)(5)(i)(F).

(F) * * *. Each room air conditioner label shall contain a generic range of the efficiencies of all room air conditioners.

2. Further, it is proposed that § 305.11(a)(5)(ii)(C)—(E) of 16 CFR be revised and (F)–(I) be added to read as follows:

§ 305.11 [Amended]

(a) * * *

(5) * * *

(ii) * * *

(C) The energy efficiency rating for furnaces is determined in accordance with § 305.5.

(D) Each furnace label shall contain a generic range of the efficiencies of all furnaces that utilize the same energy source.

(E) Placement of the labeled product on the scale shall be proportionate to the lowest and highest efficiency ratings forming the scale.

(F) The following statement shall appear on the label beneath the range(s) in bold print.

Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information regarding the efficiency and operating cost of this equipment. Ask for this information.

(G) A statement that the efficiency ratings are based on U.S. Government standard tests is required on all labels.

(H) The following statement shall appear at the bottom of the label:

IMPORTANT

REMOVAL OF THIS LABEL BEFORE CONSUMER PURCHASE IS A VIOLATION OF FEDERAL LAW (42 U.S.C. 6302).

(I) No marks or information other than specified in this part shall appear on or directly adjoining this label except for a part or publication number identification, as desired by the manufacturer. The identification number shall be in the lower right-hand corner of the label, and characters shall be in 6 point type or smaller.

* * * * *

3. Further, it is proposed that § 305.11(b)(3)(vi) of 16 CFR be revised to read as follows:

* * * * *

(B) * * *

(3) * * *

(vi) Ranges of comparability and of energy efficiency ratings are found in

Section 1 of the appropriate appendices accompanying this part. This information is required on fact sheets.

* * * * *

4. Further, it is proposed that § 305.11(c) introductory text and (c)(1) and (c)(3)(vi) of 16 CFR be revised to reads as follows:

* * * * *

(c) Manufacturers of furnances and central air conditioners may elect to disseminate information regarding the efficiencies and costs of operation of their products by means of a directory, or similar publication, provided it meets the following criteria:

(1) *Distribution.* (i) It must be distributed to substantially all retailers and assemblers of central air conditioners and furnances selling or assembling models listed in the directory.

(ii) It must be made available at cost to all other interested parties.

* * * * *

(3) *Contents* * * *

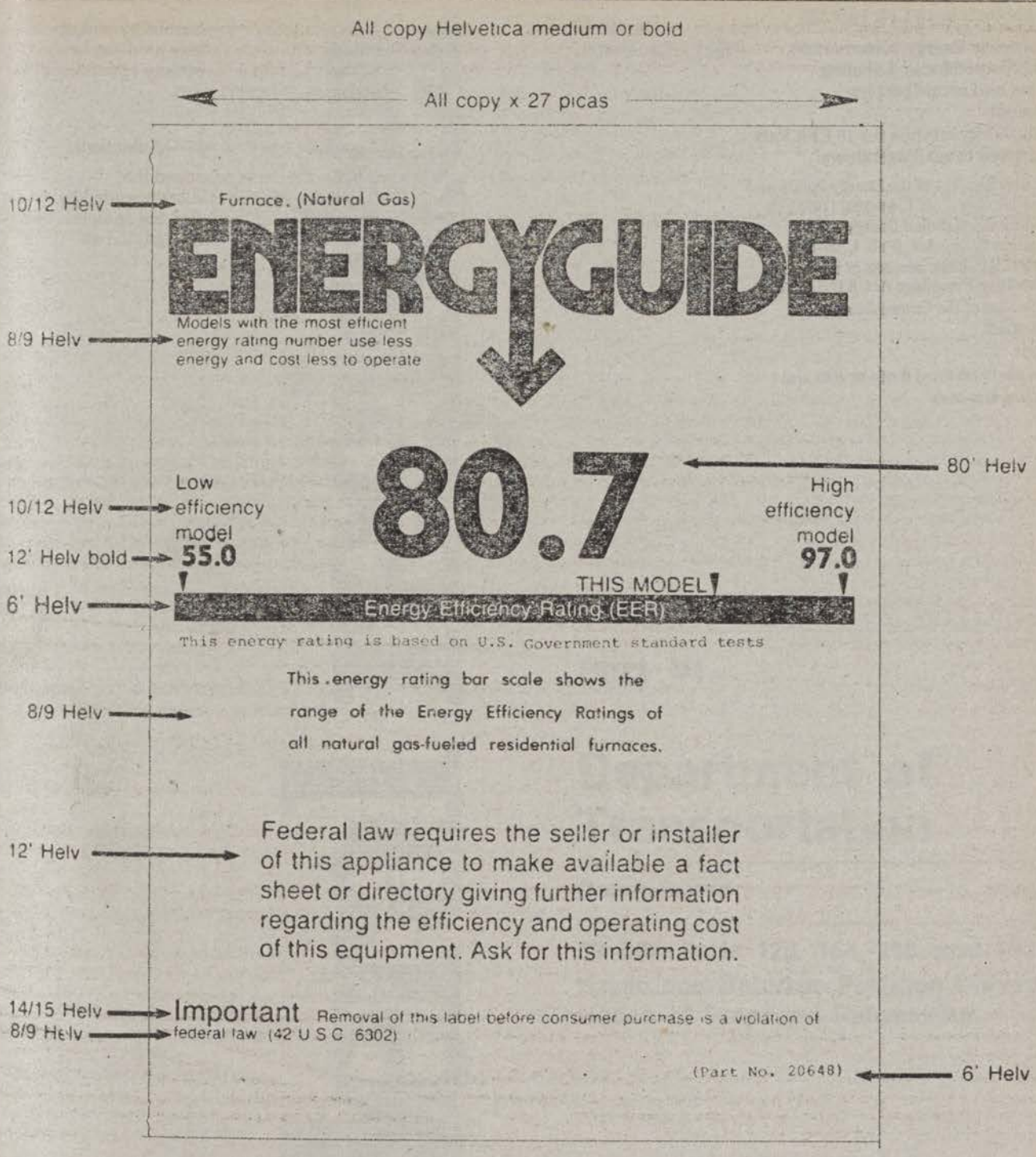
(vi) Ranges or comparability and of energy efficiency ratings are found in Section 1 of the appropriate appendices accompanying this part.

* * * * *

Appendix J to Part 305—[Amended]

5. Further, it is proposed that Appendix J to the rule be amended by the addition of the following sample furnance label, to be designated as "Figure 7":

BILLING CODE 6750-01-M



SAMPLE LABEL

Figure 7

BILLING CODE 6750-01-C

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for 16 CFR Part 305 is revised to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88–13069 Filed 6–10–88; 8:45 am]

BILLING CODE 6750–01–M

federal register

Monday
June 13, 1988

Part VI

Department of Transportation

Coast Guard

33 CFR Parts 126, 154, 155, and 156
Hazardous Materials Pollution Prevention; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 126, 154, 155, 156

[CGD 86-034]

Hazardous Materials Pollution Prevention

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the oil pollution prevention standards to also apply to vessels and facilities which transfer bulk liquid hazardous materials including those intended for incineration at sea. An analysis of data for bulk hazardous liquids materials shows an increase in the number of cargoes transported with a corresponding increase in the number of transfers, posing an ever increasing threat of harm to the navigable waters and the resources therein. These rules, if adopted, would prevent or mitigate the results of a discharge of hazardous materials into the navigable waters and would provide the same level of safety for these materials during transfer operations as currently provided for oil transfer operations.

DATES: Comments must be received on or before September 12, 1988.

ADDRESSES: Comments on the proposal should be submitted to Commandant (G-CMC), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G-CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1477. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The Draft Economic Evaluation and the Draft Environmental Assessment and Finding of No Significant Impact have been prepared and may also be inspected or copied at the Marine Safety Council.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Szigety, Office of Marine Safety, Security and Environmental Protection (G-MPS-3), Room 1108, (202) 267-0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 86-034) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgment is desired, a stamped, self-addressed post card or envelope should be enclosed.

The rules as proposed may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. However, one may be held at a time and place to be set in a subsequent notice in the **Federal Register** if written requests for a public hearing are received from interested persons raising valid issues and desiring to comment orally at a public hearing, and if it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

In the February 7, 1986 issue of the **Federal Register** (51 FR 4768) the Coast Guard proposed amendments in CGD 85-026 to the pollution prevention regulations that would implement the International Convention for Prevention of Pollution from Ships, 1973 (done at London, November 2, 1973) modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships (done at London, February 17, 1978) (MARPOL 73/78). A final rule for CGD 85-026 has not been published and the proposal is still under consideration. Both this document, CGD 86-034, and CGD 85-026 propose amendments to Parts 154 and 155. Any discrepancy between the two proposals will be reconciled prior to adoption of final rules.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. Kenneth J. Szigety, Project Manager, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Discussion

It has been determined, as described below, that a need exists to regulate bulk liquid hazardous material transfers. In order to minimize the risk of environmental damage from the greatest number of these materials, the Coast Guard proposes to expand the oil pollution prevention regulations to include standards for hazardous material transfers and proposes the expanded regulations as implementation of the Ports and Waterways Safety Act (PWSA), as amended, (33 U.S.C. 1221) instead of the Federal Water Pollution Control Act (FWPCA), as amended, (33 U.S.C. 1321). In the PWSA the Congress found that protection of the marine environment is a matter of national importance and that increased vessel traffic in the nation's ports and waterways creates a substantial hazard to the marine environment. Further, the PWSA authorizes the Secretary of the department in which the Coast Guard is operating to take whatever action is necessary to protect the navigable waters and resources therein. This authority has been delegated to the Commandant of the Coast Guard. The law provides that the action may include, but not be limited to, establishing procedures, measures, and standards for the handling, loading and unloading from vessels of dangerous articles and substances, including oil or hazardous materials as those terms are defined in 46 U.S.C. 2101. Those definitions are as follows:

" 'Oil' includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with water except dredged spoil."

" 'Hazardous material' means a liquid material or substance that is—

(A) flammable or combustible;

(B) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(C) designated a hazardous material under section 104 of the Hazardous Material Transportation Act (49 U.S.C. 1803);"

As proposed, the transferring of any hazardous material, except liquefied gases, designated under 46 CFR 153.40 (a), (b), (c), and (e) would be regulated. These materials include those listed in 46 CFR Table 30.25-1, Table 151.05, Table 1 (of Part 153), and those materials that are noxious liquid substances (NLS's) under Annex II of MARPOL 73/78. Each of these materials is included in one or more of the three groups identified as "hazardous materials" in the definition reproduced above.

The proposed regulations would apply only to vessels and facilities which transfer hazardous bulk liquid materials, i.e. transfers to, from, or within any vessel with a capacity of 250 or more barrels of these materials. This minimum vessel capacity distinguishes between large and small vessels carrying hazardous materials and therefore large and small transfers and facilities. These proposed regulations would not apply to small transfers, facilities, and vessels. The proposed regulations would apply only to bulk liquid hazardous materials because the regulations in 33 CFR Parts 154-156 apply only to liquid transfers, while hazardous bulk solid materials are regulated in 33 CFR Part 126 and 46 CFR

Part 148. To avoid the confusion that would result in having requirements for liquid bulk transfer operations in both 33 CFR Parts 126 and 156, the Coast Guard is considering establishing those requirements for oil and bulk liquid hazardous materials in only Part 156. Consequently, the Coast Guard is proposing to remove from the list of cargoes of particular hazard contained in § 126.10(d) those bulk liquid hazardous materials that are listed in 46 CFR Table 30.25–1, Table 151.05, or Table 1 (of Part 153), or are NLS's under Annex II of MARPOL 73/78. This will leave only liquefied gases on the list in § 126.10(d). The Coast Guard intends to address the suitability of the existing requirements in 33 CFR Part 126 for liquefied gas operations in a future proposal to be published in the Federal Register.

The Coast Guard has determined that most accidental discharges of oil during transfer operations are caused by either human error or equipment failure. The oil pollution prevention regulations in 33 CFR Parts 154, 155, and 156 address these causes. They have been and continue to be instrumental in reducing the number of oil discharges during transfer operations. Before the oil pollution prevention regulations were promulgated, it was estimated that there were approximately 51 spills of oil per 1000 transfers. The current discharge rate for oil is approximately 7.7 spills per 1000 transfers. It is expected that a similar reduction in the number of hazardous material spills would be obtained by expanding the oil pollution regulations.

To expand the applicability of the oil pollution prevention regulations to include vessels and facilities which transfer bulk liquid hazardous materials, numerous sections in the three Parts would need various editorial changes, e.g. adding the words "or bulk liquid hazardous material", or deleting the word "oil". For this Notice of Proposed Rule Making, the Coast Guard lists the sections with the word changes that would occur. For more complex changes, full text is proposed. This should give the reader an overall view of the proposed changes to the pollution regulations. If this proposal is adopted, the final rules will provide full text revisions contianing all changes.

Proposed changes the public should be aware of are:

The public would be relieved from a reporting requirement in § 154.710(a). This section would be revised so that the facility operator would not be required to advise the Captain of the Port (COTP), in writing, of the designations of persons in charge.

The definition of "oil" in Part 155 would change. Because it is proposed to change the authority for these regulations to the PWSA, the new definition would reflect the broad coverage of the PWSA and include oil of any kind, not just petroleum oils. That definition of oil would be added to the definitions in Part 154, and § 155.110 would be revised to except the limited definiton of "oil" contained in Part 151 and add the broader definition of Part 154.

Specific comments on the impacts and costs of complying with the following proposals are requested.

In a view of recent casualties that occurred on ships resulting in pollution incidents from the carriage of oil in a tank forward of a collision bulkhead, the Coast Guard is proposing to delete the phase "an oceangoing" from 33 CFR 155.470. In addition, the Coast Guard is proposing in § 155.470 to extend the prohibition against the carriage of oil in forepeak tanks and other spaces forward of a collision bulkhead in any ship built after 1982 to include hazardous materials.

Section 155.710 would be changed to require a qualified tankerman to be in charge of the transfer of liquid hazardous materials. The change in the requirement for tankermen will have no impact on tankship operations since they are manned by licensed officers who are considered qualified tankermen. Only the transfers to or from tank barges would be affected. The products in Table 151.05 that are non-combustible and non-flammable are not currently required to have a tankerman in charge of the transfer. They must only have special employer-provided training. The proposed regulations require qualified tankermen and some system for producing qualified tankermen for these products would have to be developed by the Coast Guard if this proposal is adopted.

Need

The Coast Guard has evaluated spill data for hazardous bulk materials and determined a need for pollution prevention regulations for these materials. Data came from two sources: the U.S. Army Corps of Engineers (COE) *Waterborne Commerce of the United States* and the Coast Guard Pollution Incident Reporting System (PIRS).

Increases in the amounts of hazardous liquid chemicals transported and the large number of discharges, and the potential development of incineration-at-sea vessels and their attendant waterfront facilities now indicate a need for these pollution prevention regulations.

The COE *Waterborne Commerce of the United States* data, is taken from Part 5, the National Summaries, from 1975–1984, and is the amount (in tons) of foreign and domestic commerce. It is broken down into 41 cargo groups, which are further broken down into categories. In Group 28-Chemicals and Allied Products, there are 15 categories that do not include any hazardous materials, and so were not used in this analysis. The remaining 6 categories were sodium hydroxide, crude oil products, benzene and toluene, sulphuric acid, basic chemicals and products, and miscellaneous chemicals. The amounts of these chemicals transported range from 45,731,335 tons in 1975 to 66,503,153 tons in 1984. An analysis of this data projects an approximate 2.0% increase per year in the amount of hazardous materials transported in the United States.

The PIRS data indicates that 494 hazardous material spills occurred from vessels and facilities from 1973–1986. These numbers are most likely low because, unlike oil which creates a "sheen" on the surface of the water, many hazardous materials do not exhibit this characteristic and the Coast Guard believes a substantial number of these spills are not reported. PIRS also includes data on the amounts of hazardous materials discharged during spills. Discharges range from a high of 228,000 gallons of acrylonitrile to a low of 12 gallons for the particular material. In addition there is a potential for transfers of hazardous materials considered "wastes", i.e., from waterfront facilities to oceangoing vessels, for incineration-at-sea. The extent to which this will occur is not known at this time, since the EPA has announced publicly that it is suspending indefinitely all actions relating to incineration-at-sea and has no plans to revive the program. For more information on incineration-at-sea, see the EPA Notice of Proposed Rulemaking (NPRM), published on February 28, 1985 (50 FR 8222) and the Coast Guard's final rule (date and final rule citation to be inserted) concerning proposed safety requirements for incinerator vessels.

During the ongoing rulemaking processes, the Coast Guard has received comments from the public expressing concern over the lack of regulations for the transfer of hazardous wastes from the waterfront facility to the vessel. One commenter said, "The transfer of the hazardous waste from the transport mode to waterfront facility to the incineration vessel is an area of serious concern as regards the effects of discharges on both human health and

the environment (water, land, and air) in the port area." These proposed regulations would address the concerns raised by this commenter.

Evaluation

The cost of the proposal would be low. The oil pollution prevention regulations already apply to some of these facilities and vessels because they transfer both oil and hazardous materials. Also many facility and vessel owners and operators voluntarily follow these accepted pollution prevention practices because they prevent accidental discharges, and because the owners and operators want to avoid paying penalties and cleanup costs for any spills of hazardous materials.

It is estimated that there are approximately 817 vessels and 300 facilities that transfer bulk liquid chemical products. Of these vessels and facilities, some transfer a material determined to be hazardous under 46 CFR 153.40 and of these, some never transfer oil. This leaves a small population of vessels and facilities that transfer only hazardous materials. The vessels and facilities in this small population that currently do not follow accepted pollution prevention practices would pay most of the costs of complying with these proposed regulations. It is estimated that 25–50% of the 817 vessels and 300 facilities do not follow pollution prevention practices. This results in approximately 205–409 vessels and 75–150 facilities which would pay most of the compliance costs.

The Transportation Systems Center (TSC) in Cambridge, MA prepared a report entitled, *Preliminary Impact Analysis of the U.S. Coast Guard's Proposed Hazardous Substances Pollution Prevention Regulations*, which is included in the docket and is available through the Project Manager listed under "For Further Information Contact". The report identified the impact of applying 33 CFR Parts 154–156 to vessels and facilities which transfer bulk liquid hazardous substances (which have been determined to be hazardous materials) by comparing the proposed requirements to current regulations and existing industry standards and practices. These included: (1) Waterfront Facilities regulations in 33 CFR Part 126; (2) Tank Vessels regulations in 46 CFR Subchapter D; (3) Certain Bulk Dangerous Cargoes regulations in 46 CFR Subchapter O; (4) Occupational Safety and Health Administration regulations in 19 CFR 1919; (5) National Fire Protection Association (NFPA) standards; and (6) American National Standards Institute (ANSI) standards. Those proposed requirements that would necessitate a change in current operations or procedures were then identified and the costs examined.

Explicitly excluded from the TSC report were various sections of the existing regulations found not to be directly applicable to liquid bulk hazardous materials because some of the characteristics of these materials vary too much from those of oil and, hence, would not be included in the text of the proposal without extensive adaptation. Those sections were §§ 154.500, 154.510, 154.520, 154.530, 154.540, 154.545, 155.310, 155.805, and 156.125. However, the Coast Guard, on the basis of it's technical expertise, disagrees with the TSC report concerning those sections and has proposed to apply them to vessels and facilities. Specific comments on the impacts and costs of complying with those sections are requested.

The results of the report indicate that the estimated cost to 200 waterfront facilities would be approximately $282,650 for the preparation of a facility Operations Manual and a Letter of Intent, and approximately $1,099,641 for 817 vessel operators for the preparation of vessel Transfer Procedures, for a total cost of $1,382,291. However, the Coast Guard has estimated that 300 rather than 200 facilities would be covered by this regulation. This would raise the estimated costs for facilities for the preparation of an Operations Manual and a Letter of Intent to $423,975 with the total cost rising to $1,523,616. These costs represent one-time costs which will generally not recur during the average 20 year lifetime of a vessel or facility.

For the reasons discussed above, many of the vessels and facilities handling hazardous materials already follow accepted pollution prevention practices. Since it is estimated that only 25–50% of these vessels and facilities do not follow some pollution prevention practices, the total estimated cost for the proposed revisions is 25–50% of $1,523,616 or $380,964–$761,808. For further information concerning the economic consequences of these proposed regulations, the Draft Economic Evaluation is available as discussed in **ADDRESSES** above.

The benefits of this proposal would be substantial, though most of them are difficult to quantify. These proposals, if adopted, would promote safe transfers of bulk liquid hazardous materials in a realistic and cost effective manner, and would result in the prevention or mitigation of accidental spills of these materials. Many bulk liquid materials are flammable or toxic and when spilled in water spread rapidly and can easily affect the surrounding population. Fewer and less severe accidental spills would result in reduced damage to vessels, less injury to facility personnel and the surrounding population, and less damage to the marine environment. Reducing the number of bulk liquid hazardous material spills would contribute to port safety and protect the marine environment of the port complex and surrounding area.

The benefits which can be quantified are the costs to the public which are avoided when a hazardous bulk liquid spill is prevented. Those costs include the value of the cargo saved, the vessel or facility cleanup costs avoided, vessel delay not experienced, and Coast Guard resources not needed.

When the pollution prevention regulations were first promulgated, 100% of the vessels and facilities which transferred oil became subject to the new regulations and the number of oil discharges was reduced by 84%; however, because many vessels and facilities which transfer bulk hazardous material already follow the pollution prevention practices in 33 CFR Parts 154–156, a corresponding reduction in the number of hazardous material spills would not be expected if these requirements are adopted. If these pollution prevention proposals are adopted, those vessels and facilities which do not currently follow pollution prevention practices when transferring hazardous materials would be required to do so. The number of hazardous material spills would be reduced by an estimated 21–42%.

According to the PIRS data, there were 494 hazardous material spills between 1973 and 1986. A 21–42% reduction in the number of spills results in 104–207 fewer spills. The cost avoided when an oil discharge was prevented in 1985 was approximately $9,171.00 per discharge. It included $875 for cargo not discharged, $550 for vessel delay avoided, $700 for cleanup costs not needed, and $196 for Coast Guard resources saved. These costs are good estimates for the cost associated with avoiding a hazardous material spill because, in many circumstances, oil cleanup technology can be applied to these spills. Using the estimated 104–207 discharges prevented, and the approximate costs of $9,171 per discharge prevented, the quantifiable benefit in dollars of applying the oil pollution prevention regulations to vessels and facilities which transfer bulk hazardous materials would be

$907,929–$1,825,029. It exceeds the estimated costs of these proposals of $380,904–$761,808. It should be noted that the cost data is for 20 years while the benefit data is for 14 years, because the Coast Guard started collecting this data in 1973.

These proposed revisions are considered to be non-major under Executive Order 12291 of February 17, 1981 (3 CFR, 1928 Comp., p. 127) and significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and the Office of Management and Budget Bulletin No. 85–9 of January 10, 1985. The total cost to the industry of these revisions would not exceed the $100 million annual threshold to qualify as a major rulemaking, and so a Regulatory Impact Analysis is not required.

The regulations in 33 CFR Parts 154–156 contain the following approved information collections for oil:

Item and Current OMB Control No.

Letter of Intent, 2115–0077
Operations Manual, 2115–0083 and 0078
Amendment to Operations Manual, 2115–0078
Oil Pollution Prevention Records, 2115–0096
Oil Pollution Prevention Alternatives, 2115–0097
Oil Transfer Procedures, 2115–0120
Declaration of Inspection, 2115–0506

Revisions to these collections to include vessels and facilities which transfer bulk liquid hazardous materials have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the U.S. Coast Guard as indicated under the section titled ADDRESSES. The Coast Guard certifies that this proposal would not have a significant economic impact on a substantial number of small entities. This proposal would only apply to large entities, i.e. transfers to, from, or within any vessel with a capacity of 250 or more barrels of oil or hazardous materials.

This regulatory project is not anticipated to have an adverse impact on the environment. It is intended to prevent or mitigate the results of a hazardous material spill into the navigable waters of the United States. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing contained in the PWSA, with respect to structures, prohibits a State or political subdivision thereof from prescribing higher safety equipment requirements or safety standards than those which are proposed by this document.

List of Subjects

33 CFR Part 126

Explosives, Harbors, Hazardous substances, Reporting and recordkeeping requirements.

33 CFR Part 154

Oil and hazardous materials pollution, Reporting and recordkeeping requirements.

33 CFR Part 155

Oil and hazardous materials pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous materials transportation, Oil and hazardous materials pollution, Reporting and recordkeeping requirements, Water pollution. In accordance with the preceding, it is proposed to amend Subchapter O of Chapter I of Title 33, Code of Federal Regulations as follows:

PART 126—[AMENDED]

1. The authority citation for Part 126 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 126.10 [Amended]

2. By removing the following cargoes from the list in § 126.10(d):

acetone cyanohydrin
acrylonitrile
allyl chloride
butylene oxide
carbon disulfide
chlorosulfonic acid
ephichlorohydrin
ethyl ether
motor fuel antiknock compounds containing lead alkyls
oleum
phosphorous, elemental
propylene oxide
toluene diisocyanate
vinyl ethel ether

3. By revising the introductory text of § 126.15(o) to read as follows:

§ 126.15 Conditions for designation as designated waterfront facility.

* * * * *

(o) *Control of liquid cargo transfer systems.* When transferring the cargoes listed in § 126.10(d), the waterfront facility transfer system must meet the following:

* * * * *

PART 154—[AMENDED]

4. The authority citation for Part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

5. By revising the heading of Part 154 to read as follows:

PART 154—OIL AND HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR MARINE TRANSFER FACILITIES

6. By revising § 154.106 to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table "Material Approved for Incorporation by Reference" which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, 1100 L St. NW., Room 8401, Washington, DC, and at the U.S. Coast Guard, Port Safety and Security Division, Washington, DC 20593.

(b) The materials approved for incorporation by reference in this part are:

American Society of Mechanical Engineers, United Engineering Center, 345 E. 47 Street, New York, New York 10017
ANSI B16.5 Steel Pipe Flanges and Flange Fittings, 1981
ANSI B16.24 Brass or Bronze Pipe Flanges, 1979
ANSI B31.3 Chemical Plant and Petroleum Refinery Piping, 1987

§§ 154.100, 154.105, 154.110, 154.300, 154.310, 154.325, 154.500, 154.550, 154.570, 154.710, 154.740 [Amended]

7. By amending Part 154 by removing the word "oil" before the word

"transfer" wherever it appears in the following:

(a) § 154.100(b).

(b) The definition of "Person in charge" in § 154.105.

(c) § 154.110(c).

(d) § 154.300(a)(2).

(e) § 154.310(a)(16).

(f) § 154.325(b).

(g) § 154.500(a)(2).

(h) § 154.500(b)(2).

(i) The introductory text of § 154.550(b).

(j) § 154.570(a)(3).

(k) § 154.570(a)(4).

(l) § 154.570(b)(2).

(m) The introductory text of § 154.710.

(n) § 154.710(b).

(o) § 154.710(c).

(p) § 154.710(d)(4).

(q) § 154.710(d)(5).

(r) § 154.710(d)(6).

(s) § 154.740(b).

8. By amending § 154.100 by removing paragraph (c) and revising paragraph (a) to read as follows:

§ 154.100 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to each facility or marina that is capable of transferring, in bulk, oil or any material that is determined to be hazardous, except liquefied gases, under 46 CFR 153.40 (a), (b), (c) or (e) to or from any vessel with a capacity of 250 barrels or more.

* * * * *

9. By amending § 154.105 by revising the definition for the word "facility" and adding the definitions for the words "marina", "hazardous material", "MARPOL 73/78", and "oil" in proper alphabetical sequence to read as follows:

§ 154.105 Definitions.

* * * * *

"Facility" means any structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to such waters, used or capable of being used to transfer oil or hazardous materials to or from a vessel.

* * * * *

"Hazardous Material" means a liquid material or substance that is—

(1) flammable or combustible;

(2) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(3) designated a hazardous material under section 104 of the Hazardous Material Transportation Act (49 U.S.C. 1803).

"Marina" means a facility that primarily services pleasure craft.

"MARPOL 73/78" stands for the International Covention for the Prevention of Pollution from Ships, 1973 (done at London, November 2, 1973) as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (done at London, February 17, 1978).

* * * * *

"Oil" includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes except dredged spoil.

* * * * *

§ 154.108 [Amended]

10. By amending § 154.108 (a) and (d) by removing the words "Marine Environment and Systems" and adding, in their place, the words "Marine Safety, Security and Environmental Protection".

§§ 154.300, 154.545 [Amended]

11. By amending Part 154 by removing the words "an oil" and adding, in their place, the word "a" in the following:

(a) § 154.300(f).

(b) The introductory text of § 154.545(d).

12. By revising § 154.310(a)(5)(ii)(*a*) to read as follows:

§ 154.310 Operations Manual: Contents.

(a) * * *

(5) * * *

(ii) * * *

(*a*) The name of the cargo as listed in Appendix II of Annex II of MARPOL 73/78 or listed in the following contained in 46 CFR Chapter I:

(*1*) Table 30.24–1 of § 30.25.

(*2*) Table 151.05 of § 151.05.

(*3*) Table 1 of Part 153.

* * * * *

§ 154.500 [Amended]

13. By amending § 154.500(e)(1) by adding the word, "for oil products," before the words "the words 'oil service' ".

14. By amending § 154.500(h) by removing the words "oil for" after the word "transfer".

§ 154.510 [Amended]

15. By amending § 154.510(a) by removing the words "B31.3a, Petroleum Refinery Piping" and adding, in their place, the words "B31.3, Chemical Plant and Petroleum Refinery Piping".

16. By amending § 154.510(c) by removing the words "of oil" and adding, in their place, the words "operations are completed."

§ 154.545 [Amended]

17. By amending § 154.545 (a) and (d) by removing the word "oil" before the word "containment".

18. By amending § 154.550 by removing the words "of oil" after the word "transfer" in the introductory text of paragraph (a) and revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 154.550 Emergency shutdown.

* * * * *

(c) The means to stop the flow of oil meeting paragraph (a) of this section must stop that flow within—

(1) 60 seconds on any facility or portion of a facility that transfers oil on or before November 1, 1980; and

(2) 30 seconds on any facility that transfers oil after November 1, 1980.

(d) The means to stop the flow of hazardous materials meeting paragraph (a) of this section must stop that flow within—

(1) 60 seconds on any facility or portion of a facility that transfers hazardous materials on or before (insert the effective date); and

(2) 30 seconds on any facility that transfers hazardous materials after (insert the effective date).

§ 154.710 [Amended]

19. By amending § 154.710(a) by removing the words "and has advised the Captain of the Port in writing of his designation" after the words "person in charge".

§§ 154.105, 154.107, 154.108, 154.310, 154.320, 154.500, 154.510, 154.520, 154.525, 154.530, 154.540, 154.545, 154.550, 154.570 [Amended]

20. By amending Part 154 by adding the words "or hazardous materials" after the word "oil" wherever it appears in the following:

(a) The definitions of the words "monitoring device", "tank vessel", and "transfer", in § 154.105.

(b) § 154.107(a)(2).

(c) § 154.108(a)(2)(ii).

(d) § 154.108(a)(2)(iii).

(e) § 154.310(a)(4).

(f) § 154.310(a)(17)(ii).

(g) § 154.310(a)(19).

(h) § 154.320(a)(2).

(i) The introductory text of § 154.500.

(j) The introductory text of § 154.500(c).

(k) § 154.510(a).

(l) § 154.510(c).

(m) § 154.520.

(n) The introductory text of § 154.525.

(o) § 154.525(c).

(p) The introductory text of § 154.530(a).

(q) § 154.540.

(r) § 154.545(a).

(s) § 154.545(c)(1).

(t) § 154.545(c)(2).

(u) § 154.545(d) introductory text.

(v) § 154.545(d)(4).
(w) § 154.550(a) introductory text.
(x) § 154.550(a)(2).
(y) The introductory text of § 154.550(b).
(z) § 154.570(a)(2).
(aa) § 154.570(a)(4).

21. By amending Part 154 by adding the words "hazardous material" after word "oil" in §§ 154.310(a)(18) and 154.530(c).

PART 155—[AMENDED]

22. The authority citation to Part 155 is revised and a note to follow the authority citation is added to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46 except § 155.450 which is issued under 33 U.S.C. 1321(j)(i)(C) E.O. 11735, as amended, 3 CFR, 1971–1975 COMP. p. 793, 49 CFR 1.46. Sections 155.100, 155.110, 155.120, 155.130, 155.350, 155.360, 155.370, 155.380, 155.390, 155.400, 155.430, 155.440, and 155.470 are also issued under 33 U.S.C. 1903(b); 49 CFR 1.46.

Note: Additional requirements for vessels carrying hazardous materials are contained in 46 CFR Parts 151 and 153.

23. By revising the heading of Part 155 to read as follows:

PART 155—OIL AND HAZARDOUS MATERIALS POLLUTION PREVENTION REGULATIONS FOR VESSELS

24. By amending Part 155 by removing the word "oil" before the word "transfer" wherever it appears in the following:

§§ 155.310, 155.710, 155.720, 155.730, 155.740, 155.750, 155.760, 155.780, 155.785, 155.790, 155.800, 155.805, 155.820 [Amended]

(a) § 155.310(a)(1).
(b) § 155.310(b)(2).
(c) The heading of Subpart C.
(d) § 155.710(a)(1).
(e) § 155.720 introductory text.
(f) § 155.730.
(g) § 155.740 introductory text, (b), and (c).
(h) § 155.750(a) introductory text, (a)(1)(iii) (a)(2) introductory text, (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (a)(8), (b), and (c).
(i) § 155.760.
(j) § 155.780(c).
(k) § 155.785(a).
(l) § 155.790 (a)(3), (a)(4), and (b)(2).
(m) The heading of § 155.800.
(n) § 155.805(a).
(o) § 155.820(a).

25. By revising § 155.110 to read as follows:

§ 155.110 Definitions.

The definitions in Part 151, except for the word "oil", and in Part 154 of this chapter apply to this part.

§ 155.130 [Amended]

26. By amending §§ 155.130(a)(2)(ii) and 155.130(d) by removing the words "by oil" after the word "pollution".

27. By amending § 155.130(a)(1)(iii) by removing the words "oil being discharged" and adding, in their place, the words "discharges occurring".

28. By revising the heading of § 155.310 to read as follows:

§ 155.310 Cargo discharge containment.

* * * * *

29. By amending Part 155 by removing the word "oil" before the word "loading" in the following:

§ 155.310 [Amended]

(a) § 155.310(a)(1) introductory text.
(b) § 155.310(b)(1).
(c) § 155.310(b)(2).

30. By amending the introductory text of § 155.310(a) by removing the word "oil" before the word "tanker".

31. By amending the introductory text of § 155.310 (a) and (b) by adding the word "as" before the word "cargo".

32. By amending § 155.310 (a)(2) and (b)(4) by removing the words "the oil" and adding, in their place the word "these".

33. By revising the heading of § 155.470 to read as follows:

§ 155.470 Prohibited spaces.

* * * * *

34. By amending § 155.470(a) by removing the word "an oceangoing" and adding in their place the word "a".

35. By amending § 155.470(b) and § 155.770 by removing the words "oil or oily waste" and adding, in their place, the words "oil, oily waste, or hazardous materials".

§ 155.700 [Amended]

36. By amending § 155.700 by removing the words "of oil" after the word "transfer".

§ 155.710 [Amended]

37. By amending § 155.710(a) (1) and (2) by adding the words "or the cargo" after the words "grade of cargo".

§ 155.720 [Amended]

38. By amending the introductory text of § 155.720 by adding the word "transferring" after the words "Part 156 for" and by removing the words "transfers of oil" from both paragraph (a) and paragraph (b) of this section.

§ 155.780 [Amended]

39. By amending § 155.780(a) by removing the words "an oil".

40. By revising § 155.750(a)(9) to read as follows:

§ 155.750 Contents of transfer procedures.

(a) * * *

(9) Procedures for reporting discharges into the water of oil and the materials determined to be hazardous, except liquefied gases, under 46 CFR 153.40 (a), (b), (c) or (e);

* * * * *

§ 155.760 [Amended]

41. By amending § 155.760(c) by removing the words "of oil" after the word "discharge".

42. By revising the heading of § 155.770 to read as follows:

§ 155.770 Draining into bilges.

* * * * *

§ 155.780 [Amended]

43. By amending § 155.780(a) by removing the word "oil" after the word "cargo" and by removing the words "of oil" after the word "flow".

44. By amending § 155.780(b) by removing the word "oil" before the words "could siphon" and adding in its place the word "they".

§ 155.785 [Amended]

45. By amending § 155.785(a) by removing the word "oil" after the word "cargo".

§ 155.790 [Amended]

46. By amending § 155.790(a) introductory text by removing the words "transferring oil" and adding in their place the words "conducting transfer operations".

§ 155.310, 155.470, 155.700, 155.710, 155.720, 155.750, 155.780, 155.785, 155.790, 155.800, 155.805, 155.815 [Amended]

47. By amending Part 155 by adding the words "or any material that is determined to be hazardous, except liquefied gases, under 46 CFR 153.40 (a), (b), (c), or (e)" after the word "oil" wherever it appears in the following:

(a) § 155.310(a) introductory text.
(b) § 155.310(b) introductory text and (b)(4)
(c) § 155.470(a).
(d) § 155.700
(e) § 155.710(a) introductory text.
(f) § 155.720 introductory text.
(g) § 155.750(a)(5).
(h) § 155.780(a).
(i) § 155.780(b).
(j) § 155.785(a).
(k) § 155.790(a) introductory text.
(l) § 155.790(a)(2).
(m) § 155.790(a)(4).
(n) § 155.800.
(o) § 155.805(a).
(p) § 155.815(a)(5).

PART 156—[AMENDED]

48. The authority citation to Part 156 is revised to read as follows:

Authority: Subpart A is issued under 33 U.S.C. 1231; 49 CFR 1.46. Subpart B is issued under 46 U.S.C. 3715(b); 49 CFR 1.46.

49. By revising the heading of Subpart A to read as follows:

Subpart A—Pollution Prevention Regulations for Oil and Hazardous Material Transfer Operations

* * * * *

50. By revising § 156.100 to read as follows:

§ 156.100 Applicability.

This subpart applies to the transfer of oil or any material determined to be hazardous, except liquefied gases, under 46 CFR 153.40 (a), (b), (c), or (e) on the navigable waters or contiguous zone of the United States to, from, or within any vessel having a capacity of 250 barrels or more, except this subpart does not apply to the transfer operation within a public vessel.

§ 156.110 [Amended]

51. By amending § 156.110 (a) and (d) by removing the words "Marine Environment and Systems" and inserting, in their place, the words "Marine Safety, Security and Environmental Protection".

§§ 156.112, 156.113, 156.115, 156.118, 156.120, 156.125, 156.130, 156.150, 156.160, 156.170 [Amended]

52. By amending Part 156 by removing the word "oil" before the word "transfer" or "transfers" wherever it appears in the following:

(a) The introductory text of § 156.112.
(b) § 156.113(a).
(c) § 156.115(a).
(d) § 156.115(b).
(e) The heading of § 156.118.
(f) The introductory text of § 156.118(a).
(g) § 156.118(a)(4).
(h) § 156.118(b).
(i) § 156.118(c).
(j) The heading and introductory text of § 156.120.
(k) § 156.120(b).
(l) § 156.120(d).
(m) § 156.120(e).
(n) § 156.120(h).
(o) § 156.120(i).
(p) § 156.120(p).
(q) § 156.120(t)(1).
(r) § 156.120(t)(2).
(s) § 156.120(t)(3).
(t) The introductory text of § 156.120(u).
(u) § 156.120(u)(2).
(v) § 156.120(v).
(w) § 156.120(w) introductory text.
(x) § 156.120(x).
(y) § 156.125(b)(1).
(z) § 156.125(c).
(aa) The introductory text of § 156.130(a).
(bb) § 156.130(b).
(cc) The introductory text of § 156.130(c).
(dd) § 156.150(c)(5).
(ee) § 156.150(e).
(ff) § 156.160(c).
(gg) § 156.170(a).
(hh) § 156.170(c)(1).
(ii) § 156.170(c)(4).
(jj) § 156.170(d).

53. By amending Part 156 by removing the words "an oil" and adding, in their place, the word "the" in the following:

§§ 156.120, 156.125, 156.150, 156.160 [Amended]

(a) § 156.120(p).
(b) The introductory text of § 156.125(a).
(c) The introductory text of § 156.125(b).
(d) § 156.150(f).
(e) § 156.160(a).

54. By revising the heading of § 156.125 to read as follows:

§ 156.125 Discharge cleanup.

* * * * *

§§ 156.107, 156.110, 156.112, 156.118, 156.120, 156.125, 156.130, 156.150, 156.160, 156.170 [Amended]

55. By amended Part 156 by adding the words "or hazardous materials" after the word "oil" wherever it appears in the following:

(a) § 156.107(a)(3).
(b) § 156.110(a)(2)(ii).
(c) § 156.110(a)(2)(iii).
(d) § 156.112.
(e) § 156.118(a)(3).
(f) § 156.120(d).
(g) § 156.120(f).
(h) § 156.120(i).
(i) § 156.120(w)(7).
(j) The introductory text of § 156.125(a).
(k) § 156.125(b)(1).
(l) § 156.125(b)(2).
(m) § 156.130(d).
(n) § 156.150(a).
(o) § 156.160(b).
(p) § 156.160(c).
(q) § 156.170(c)(1)(i).

J. C. Irwin,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

Dated: June 3, 1988.

[FR Doc. 88-13024 Filed 6-10-88; 8:45 am]
BILLING CODE 4910-14-M

Reader Aids

Federal Register

Vol. 53, No. 113

Monday, June 13, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General Information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

19879-20088.....1
20089-20274.....2
20275-20594.....3
20595-20806.....6
20807-21404.....7
21405-21618.....8
21619-21790.....9
21791-21976.....10
21977-22124.....13

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 88-15 of May 20, 1988.....20595
No. 88-16 of May 20, 1988.....21405
No. 88-18 of June 3, 1988.....21407
Executive Orders:
12641.....21975

5 CFR

307.....20807
316.....20807
752.....21619

7 CFR

2.....21977
28.....20089
58.....20275
250.....20416, 20597
405.....20278
440.....20279
713.....20280
770.....20280
795.....21409
800.....21791
910.....20599, 21792
911.....21624
915.....20599, 21624
918.....21624
923.....21624
944.....20599
946.....21793
982.....21624
987.....19879
989.....19880
998.....20290
1033.....21626
1046.....21626
1413.....20280
1421.....20280
1425.....19882, 21964
1470.....20280
2003.....20090
3403.....21966
Proposed Rules:
68.....20636
401.....20331-20333, 21455
905.....20121
907.....21651
908.....21651
928.....20121
998.....21666
1001.....21825
1002.....21825
1004.....21825
1126.....22003
1230.....21456, 21836
1446.....19923, 21964
1930.....21460
1944.....19924

8 CFR

274a.....20086

9 CFR

78.....21979
92.....2030, 21794
331.....20099
381.....20099

10 CFR

11.....21979
25.....21979
35.....21627
50.....20603, 21981
625.....20508
Proposed Rules:
2.....20335
50.....19930, 20856
71.....21550

12 CFR

4.....20611
208.....20808
210.....21983
261.....20812
346.....21986
563.....20611
606.....19884
620.....21986
Proposed Rules:
225.....21462
575.....21474
576.....21474
577.....21474
584.....21838
611.....20637
612.....20637
618.....20637, 20647
620.....20637
704.....20122

13 CFR

121.....21547
Proposed Rules:
121.....20857
124.....21482
125.....22015

14 CFR

39.....20101, 20825-20830, 21411, 21412, 21628, 21630, 21809
71.....20102, 20414, 20832, 20833, 21396, 21811
91.....20103, 21986
95.....20264
97.....21811
99.....21989

205.....20626
206.....20626
209.....20631
219.....20626
226.....20626
227.....20632
235.....20626
252.....20626, 20631, 20632
519.....21823
970.....21646

Proposed Rules:
215.....19966, 21862
252.....19966

49 CFR

30.....19914
566.....20119
1035.....20853
1104.....20853
1115.....20853

Proposed Rules:
383.....20147
391.....20147
392.....20147
571.....20659
604.....20660
1002.....19969

50 CFR

23.....19919
253.....20323
301.....20327
652.....20854
658.....21999
661.....20119, 22000
663.....20634, 22001
672.....19921, 21649
675.....21454

Proposed Rules:
Ch. VI.....20661
20.....20874
600.....21863
601.....21863
604.....21863
605.....21863
642.....22036
644.....21501
661.....19971

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List June 10, 1988

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0-26	15.00	Jan. 1, 1988
27-45	11.00	Jan. 1, 1988
46-51	16.00	Jan. 1, 1988
52	23.00	Jan. 1, 1988
53-209	18.00	Jan. 1, 1988
210-299	22.00	Jan. 1, 1988
300-399	11.00	Jan. 1, 1988
400-699	17.00	Jan. 1, 1988
700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
1000-1059	15.00	Jan. 1, 1988
1060-1119	12.00	Jan. 1, 1988
1120-1199	11.00	Jan. 1, 1988
1200-1499	17.00	Jan. 1, 1988
1500-1899	9.50	Jan. 1, 1988
1900-1939	11.00	Jan. 1, 1988
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1-199	19.00	Jan. 1, 1988
200-End	17.00	Jan. 1, 1988
10 Parts:		
0-50	18.00	Jan. 1, 1988
51-199	14.00	Jan. 1, 1988
200-399	13.00	[2] Jan. 1, 1987
400-499	13.00	Jan. 1, 1988
500-End	24.00	Jan. 1, 1988
11	10.00	July 1, 1988
12 Parts:		
1-199	11.00	Jan. 1, 1988
200-219	10.00	Jan. 1, 1988
220-299	14.00	Jan. 1, 1988
300-499	13.00	Jan. 1, 1988
500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1-59	21.00	Jan. 1, 1988
60-139	19.00	Jan. 1, 1988
140-199	9.50	Jan. 1, 1988
200-1199	20.00	Jan. 1, 1988
1200-End	12.00	Jan. 1, 1988
15 Parts:		
0-299	10.00	Jan. 1, 1988
300-399	20.00	Jan. 1, 1988
400-End	14.00	Jan. 1, 1988
16 Parts:		
0-149	12.00	Jan. 1, 1988
150-999	13.00	Jan. 1, 1988
1000-End	19.00	Jan. 1, 1988
17 Parts:		
1-199	14.00	Apr. 1, 1988
200-239	14.00	Apr. 1, 1987
240-End	19.00	Apr. 1, 1987
18 Parts:		
1-149	15.00	Apr. 1, 1987
150-279	14.00	Apr. 1, 1987
280-399	13.00	Apr. 1, 1987
400-End	8.50	Apr. 1, 1987
19 Parts:		
1-199	27.00	Apr. 1, 1987
*200-End	5.50	Apr. 1, 1988
20 Parts:		
1-399	12.00	Apr. 1, 1987
400-499	23.00	Apr. 1, 1987
500-End	24.00	Apr. 1, 1987
21 Parts:		
*1-99	12.00	Apr. 1, 1988
100-169	14.00	Apr. 1, 1988
170-199	16.00	Apr. 1, 1987
200-299	5.00	Apr. 1, 1988
*300-499	26.00	Apr. 1, 1988
500-599	21.00	Apr. 1, 1987
600-799	7.50	Apr. 1, 1988
800-1299	16.00	Apr. 1, 1988
1300-End	6.00	Apr. 1, 1988
22 Parts:		
1-299	19.00	Apr. 1, 1987
300-End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0-199	14.00	Apr. 1, 1987
200-499	26.00	Apr. 1, 1987
500-699	9.00	Apr. 1, 1987
700-1699	18.00	Apr. 1, 1987
1700-End	12.00	Apr. 1, 1987
***25**	24.00	Apr. 1, 1988
26 Parts:		
*§§ 1.0-1-1.60	13.00	Apr. 1, 1988
§§ 1.61-1.169	22.00	Apr. 1, 1987
§§ 1.170-1.300	17.00	Apr. 1, 1987
§§ 1.301-1.400	14.00	Apr. 1, 1988
§§ 1.401-1.500	21.00	Apr. 1, 1987
§§ 1.501-1.640	15.00	Apr. 1, 1987
§§ 1.641-1.850	17.00	Apr. 1, 1987
§§ 1.851-1.1000	27.00	Apr. 1, 1987
§§ 1.1001-1.1400	16.00	Apr. 1, 1987
§§ 1.1401-End	20.00	Apr. 1, 1987
2-29	20.00	Apr. 1, 1987
30-39	13.00	Apr. 1, 1987
40-49	13.00	Apr. 1, 1988
*50-299	15.00	Apr. 1, 1988
300-499	15.00	Apr. 1, 1987
500-599	8.00	[3] Apr. 1, 1980
600-End	6.00	Apr. 1, 1987
27 Parts:		
1-199	21.00	Apr. 1, 1987
200-End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987

Title	Price	Revision Date
29 Parts:		
0–99	16.00	July 1, 1987
100–499	7.00	July 1, 1987
500–899	24.00	July 1, 1987
900–1899	10.00	July 1, 1987
1900–1910	28.00	July 1, 1987
1911–1925	6.50	July 1, 1987
1926	10.00	July 1, 1987
1927–End	23.00	July 1, 1987
30 Parts:		
0–199	20.00	July 1, 1987
200–699	8.50	July 1, 1987
700–End	18.00	July 1, 1987
31 Parts:		
0–199	12.00	July 1, 1987
200–End	16.00	July 1, 1987
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	20.00	July 1, 1987
190–399	23.00	July 1, 1987
400–629	21.00	July 1, 1987
630–699	13.00	[5] July 1, 1986
700–799	15.00	July 1, 1987
800–End	16.00	July 1, 1987
33 Parts:		
1–199	27.00	July 1, 1987
200–End	19.00	July 1, 1987
34 Parts:		
1–299	20.00	July 1, 1987
300–399	11.00	July 1, 1987
400–End	23.00	July 1, 1987
35	9.00	July 1, 1987
36 Parts:		
1–199	12.00	July 1, 1987
200–End	19.00	July 1, 1987
37	13.00	July 1, 1987
38 Parts:		
0–17	21.00	July 1, 1987
18–End	16.00	July 1, 1987
39	13.00	July 1, 1987
40 Parts:		
1–51	21.00	July 1, 1987
52	26.00	July 1, 1987
53–60	24.00	July 1, 1987
61–80	12.00	July 1, 1987
81–99	25.00	July 1, 1987
100–149	23.00	July 1, 1987
150–189	18.00	July 1, 1987
190–399	29.00	July 1, 1987
400–424	22.00	July 1, 1987
425–699	21.00	July 1, 1987
700–End	27.00	July 1, 1987
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	10.00	July 1, 1987
101	23.00	July 1, 1987
102–200	11.00	July 1, 1987
201–End	8.50	July 1, 1987

Title	Price	Revision Date
42 Parts:		
1–60	15.00	Oct. 1, 1987
61–399	5.50	Oct. 1, 1987
400–429	21.00	Oct. 1, 1987
430–End	14.00	Oct. 1, 1987
43 Parts:		
1–999	15.00	Oct. 1, 1987
1000–3999	24.00	Oct. 1, 1987
4000–End	11.00	Oct. 1, 1987
44	18.00	Oct. 1, 1987
45 Parts:		
1–199	14.00	Oct. 1, 1987
200–499	9.00	Oct. 1, 1987
500–1199	18.00	Oct. 1, 1987
1200–End	14.00	Oct. 1, 1987
46 Parts:		
1–40	13.00	Oct. 1, 1987
41–69	13.00	Oct. 1, 1987
70–89	7.00	Oct. 1, 1987
90–139	12.00	Oct. 1, 1987
140–155	12.00	Oct. 1, 1987
156–165	14.00	Oct. 1, 1987
166–199	13.00	Oct. 1, 1987
200–499	19.00	Oct. 1, 1987
500–End	10.00	Oct. 1, 1987
47 Parts:		
0–19	17.00	Oct. 1, 1987
20–39	21.00	Oct. 1, 1987
40–69	10.00	Oct. 1, 1987
70–79	17.00	Oct. 1, 1987
80–End	20.00	Oct. 1, 1987
48 Chapters:		
1 (Parts 1–51)	26.00	Oct. 1, 1987
1 (Parts 52–99)	16.00	Oct. 1, 1987
2 (Parts 201–251)	17.00	Oct. 1, 1987
2 (Parts 252–299)	15.00	Oct. 1, 1987
3–6	17.00	Oct. 1, 1987
7–14	24.00	Oct. 1, 1987
15–End	23.00	Oct. 1, 1987
49 Parts:		
1–99	10.00	Oct. 1, 1987
100–177	25.00	Oct. 1, 1987
178–199	19.00	Oct. 1, 1987
200–399	17.00	Oct. 1, 1987
400–999	22.00	Oct. 1, 1987
1000–1199	17.00	Oct. 1, 1987
1200–End	18.00	Oct. 1, 1987
50 Parts:		
1–199	16.00	Oct. 1, 1987
200–599	12.00	Oct. 1, 1987
600–End	14.00	Oct. 1, 1987
CFR Index and Findings Aids	28.00	Jan. 1, 1988
Complete 1988 CFR set	595.00	1988
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Individual copies	3.75	1988

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

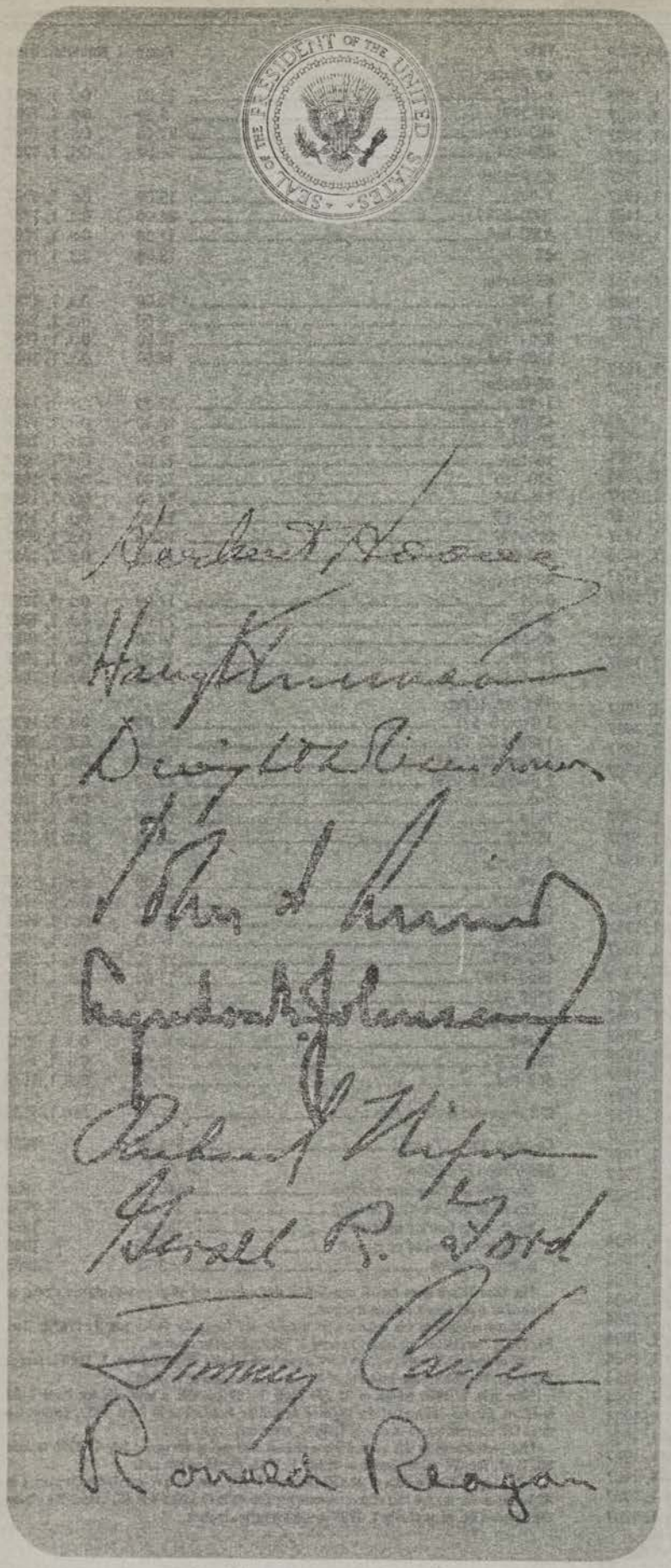
[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

Herbert Hoover

1932–33 ..... $24.00

Lyndon B. Johnson

1963–64
(Book I) $21.00

Gerald R. Ford

1975
(Book I) $22.00

1975
(Book II) $22.00

Jimmy Carter

1977
(Book II) $22.00

1978
(Book I) $24.00

1979
(Book I) $24.00

1979
(Book II) $24.03

1980–81
(Book I) $21.00

1980–81
(Book II) $22.00

1980–81
(Book III) $24.00

Ronald Reagan

1981 ..... $25.00

1982
(Book II) $25.00

1983
(Book I) $31.00

1983
(Book II) $32.00

1984
(Book I) $36.00

1984
(Book II) $36.00

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325.